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The Probation Service and the Governance of the Offender

Discourse, Power and Politics in the Probation Service in
England and Wales

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Thesis submitted in partial fulfilment of the requirements for the degree of
Doctor of Philosophy in the Faculty of Social Sciences at the University of
Kent at Canterbury

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A c k n o w l e d g e m e n t s

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A b s t r a c t

The study is informed by Foucault's concept of 'governmentality' – the ways in which agencies and institutions attempt to shape the conduct of individuals in modern democracies. The study links this conception of governance to two major trains of political thought which, it is argued, characterise the ways in which twentieth century society in the United Kingdom has been organised. Given that modern society translates its political problems into 'technical' solutions through the use of various agencies such as probation, it is argued that the discourse of probation will reflect certain tenets of the salient political rationality at a particular time.

The first such political rationality is identified as 'welfarism', an approach to government through a complex apparatus of expert agencies and practitioners charged with addressing the conduct of citizens across a wide ranging terrain of social and economic life. In contrast to this, a neo-liberal rationality, predicated upon individualism is depicted as having become increasingly influential since the late 1970s, restructuring practice away from welfarist approaches that sought to provide services aimed at the creation of better citizens.

The thesis of this study holds that the shift away from the welfarist rationality of governance will be reflected within the organisation and practice of the present day probation service. To determine the extent of this shift, probation discourse is analysed in terms of its resonance with the tenets of welfarism and neo-liberalism. The study addresses organisational and epistemological discourse over the twentieth century using the texts and documents through which probation was debated, discussed and practised in order to map out the contours of welfarism and neo-liberalism. To determine the extent of contemporary change, a sample of pre-sentence reports is analysed in terms of their correspondence with the two political rationalities. It is concluded that, whilst organisationally there has been a clear shift toward neo-liberalism, probation practice still evidences certain approaches that are informed by a more welfarist discourse, suggesting a certain 'hybridity' of practice.

Introduction

This study is concerned with change in the probation service in England and Wales (and which I will refer to from here on as 'the Probation Service'). It sets out to map probation's contribution to a certain mode of political organization which Foucault (1991) referred to as 'governmentality'. Within the operational matrix of governmental institutions, probation has played an important role in working with offenders in order to change their law-breaking behaviour into more law-abiding comportment. Foucault (1982) refers to the ways in which agencies and institutions seek to 'govern' the 'conduct of conduct' of certain groups of individuals and it is my contention here that probation's activities are helpfully examined from a framework based upon this perspective of governance.

At the start of the twenty first century, the probation service finds itself in a period of unprecedented change. From April 2001, the service loses the localised, semi-autonomous status it has enjoyed since the 1907 Probation of Offenders Act and becomes the 'National Probation Service of England and Wales', with a national director and a large, centralised managerial apparatus. New lines of accountability will bind regional services closer to the centre and adherence to policy will be evaluated through a 'basket' of performance measures, indicators and targets. Nor is change confined to the organisational level. Shifts in probation officer training have seen an end to the university-based formal academic qualification through which professional status was achieved. In its place is a competency-based certification involving part-time study and on-the-job work. The nature of probation practice is also changing. "What Works" – the identification through research of factors said to characterise successful work with offenders – in terms of reduced recidivism- has led to the development of new, "accredited" programmes. Such programmes are given accreditation by an independent panel consisting for the most part of psychologists and indeed, it is psychology which now provides the *raison d'être* for practice. This is reflected in the prison psychology department's metamorphosis into the prison and probation psychology department.

Successful practice with offenders is now said to consist of the delivery of programmes which are: risk based; focus upon certain 'criminogenic' needs; incorporate the principles of cognitive behavioural psychology and which are delivered in exact accordance with the programme manual. Probation practice, then, is now literally about 'doing it by the book'. Such shifts in practice are, as one might expect in any large public sector institution, accompanied by a raft of bureaucratic mechanisms designed to ensure that practice becomes more transparent to the managerial gaze of the centre. Attempts have been made to ensure such transparency through the development throughout the 1990s of a national computerised case management and recording system (CRAMS), an initiative which was conceived and delivered from the centre and whose

multi-million pound failure is, at the time of writing, still seeing pigeons coming home to roost in the Home Office. The “What Works” initiative is also making new and complex demands upon the service as it comes to terms with its new instantiation as a “correctional” agency (Home Office 1999)

Making Sense of Change

A central premise underpinning this study is that there have been a series of social, economic, cultural and political shifts and transformations in industrialised Western societies. These transformative forces have resulted in new political responses to the problems which have accompanied such change, political responses which have problematised and re-problematised social issues and concerns in new ways. The study addresses the impact of these shifts of political discourse upon the organisation and practice of the probation service in England and Wales¹.

There is now an ample literature that addresses various aspects of these societal transformations and, whilst some of the detail may be contested, there is still a widespread social scientific consensus that many aspects of late *twentieth* century life have profoundly changed from those which had developed during the first sixty odd years of the century. If one is to depict change, then it is as well to first depict what that change is changing from. Broadly defined, the transformations of late *twentieth* century society mark a shift away from the mass industrial welfarist society that had developed from the late nineteenth century through to the 1960s and whose ideal-typical form is provided by the political, social, economic and cultural institutions and practices of the Keynesian post-war welfare state. The Keynesian welfare state introduced a “system of political control over economic life” in which the state attempted to intervene across the landscape of social and economic life of Western societies, in order to balance the diverse interests, needs and activities of its citizens (Skidelsky 1979:55). This welfarist state linked macro-economic organisation with the well-being of its citizens: economic prosperity and growth were predicated upon the mass Fordist-Taylorist industries whose economies of scale enabled a new post war standard of living far surpassing that enjoyed by the working classes prior to the war. High levels of productivity enabled high wage levels which in turn enabled new levels of welfare benefits and services. All of this required government to take an active and central role in the co-ordination of this circle of prosperity. By maintaining full employment, the welfare state would promote the most efficient use of its population who would benefit from higher rates of pay and also enjoy various welfare benefits according to their needs. The rapid growth of consumerism was fuelled by both the high rates of Fordist production and high rates of pay. The welfarist state, then, represented the cultivation of mechanisms of security through which the individual citizen was imbricated in a universally beneficial relationship between capital and labour. Corporatist wage bargaining implicated the state into this relationship, holding the balance between the two sets of interests (Jessop 1991:87). Within the framework of

the nation-state, this balancing act maintained a steady growth, avoiding the cycles of boom and bust that had plagued the economy in the earlier part of the century (Allen, Braham and Lewis 1992). Welfarism involved a vision of a society in which collective and individual interests were balanced across the social and economic realms of the nation state. A key element of such balance was the use of a plethora of experts and expert knowledge in managing and regulating the modern state and which saw the consolidation and growth of welfare services.

The welfarist state as it had developed since 1945, was a highly organised social-economic structure, within which capital and labour existed in a complementary partnership facilitated by the guiding hand of the state. Mass production served as a template for the organisation of education, health, culture and consumption, as the new “affluent worker” enjoyed the fruits of peacetime prosperity. Mass industrial society was predicated upon this affluent worker, a male breadwinner whose wages both supported his family and, by virtue of his insurance contributions, provided for them in case of sickness, paid for their education and generally insured them against the attendant ills of modern society (Bocock and Thompson 1992).

The disruption caused to this structure by events in the 1970s, however, inaugurated a new era that saw a dismantling of many of the assumptions and systems that had typified post-war welfare capitalism and with it, a decline in the popularity of the welfarist state. Global events were increasingly impacting upon the ability of the nation state to maintain a particular economic policy: national economies were increasingly vulnerable to distal events which carried immediate implications and repercussions regardless of national borders such as the oil crises of the early 1970s. The increased globalisation of capital mobility affected older economic dependencies and relationships and came to disrupt the state’s ability to manage capital and labour in the symbiotic relationship envisaged by Keynesian politics. Growth slowed and then ceased, with the emergence of stagnant and inflated economies, balance of payments crises and industrial unrest. Within a few years these transformational dynamics had precipitated the re-emergence of mass unemployment and a widespread restructuring of the mass industrial production, involving major social changes and precipitating new and different political responses to these problems and changes (Allen, Braham and Lewis 1992).

The changes which began to emerge during the 1970s, have been variously interpreted in terms of marking a transition to “Post-Industrialism” (Touraine 1971; Bell 1974), “Late modernity”(Giddens 1991), “Post-Fordism” (Piore and Sabel 1984), “Disorganised Capitalism” (Lash and Urry 1987;1994), ‘Post-Modernism’ (Leotard 1984; Jameson 1986; Bauman 1992). Whilst these authors exhibit a wide range of views on the exact nature and direction of late *twentieth* century social change, several themes can be identified: a decline in mass industrial organisation with a shift toward flexibility and specialization in production and skills resulting in massive job losses in the reorganisation of traditional industries during the 1970s and 1980s. A

growth of low paid, part time work associated with a “feminisation” of the workforce, undermining the older patriarchal arrangements and assumptions of industrial modernity as essential “core” elements of work were retained whilst other functions were hived off to a “periphery” of unskilled workers taken on using hire and fire tactics to support just-in-time production schemes; The rise of single issue politics and a fragmentation of older class affiliations; an increasingly individualised attitude toward the notion of “welfare”(Burrows and Loader 1994). The old deference toward the authority of experts diminished and hostility toward universal and standardised provision increased as people came to see themselves as consumers rather than clients of services. In this respect, the private provision of many welfare services became more attractive to those who could afford them (Murray 1991:22).

Against this background of change, a new political discourse achieved increasing salience, a discourse we may identify as that of a “New Right” train of thought. This political thought articulated elements of liberalism together with a conservative morality to produce a highly individualistic discourse aimed at “rolling back the state” – diminishing the role of big government in order to allow individual incentive and initiative to flourish unchecked by state bureaucracy. 1979 saw the election of the first Thatcher government upon this New Right platform. Within this new, dominant political rationality, new social and economic problems emerged: indeed, the Keynesian Welfare State, formerly the solution to the problems of pre World War 2 capitalism, was itself now identified as the problem, stifling growth and encouraging sloth and dependency. Similarly, many of the institutions that clustered around notions of “welfare” became subject first to problematisation and then to transformation as their services and activities were reconceptualised within this new “neo-liberal” discourse whose central tenet was an inherent opposition to the precepts of welfarism.

The changing political sensibilities which transfigured the institutions of welfarism also impacted upon the way crime and the activities of the criminal justice system were considered and addressed (Garland 2001). Welfarism had deployed its responses to crime in terms of its overarching utopian ambitions: crime was a result of misfortune and maladjustment, a pathology to be cured – either by addressing individual or social pathological states conducive to crime and delinquency. As Garland remarks, this was an “unworried reaction” to crime, a confidence in the power of expertise and knowledge to provide a solution (Garland 2001:66). Within neo-liberal discourse, crime was shorn of such an understanding and recast as a result of personal choice and caprice. Punishment and deterrence were preferable to understanding the criminal. The impact this had upon crime control and criminal justice has been considerable and involves a rethinking of how crime is explained and understood with concomitant implications for the solutions that flow from this new political reasoning. These implications are argued below to impact upon the probation service and its organisation and practice.

Probation Narratives

We may, then, identify a series of viewpoints within which probation operates. These viewpoints have certain complementary areas of overlap and intersection and are here separated for the sake of analytic clarity. There are three perspectives from which the role and activities of probation have tended to be discussed and debated. They are:

1) A teleological perspective. At any particular time, probation represents the state of the art, the limit of progress this far with any reference to history merely included as instances of the institutional signposts and naïve exemplars that litter probation's evolutionary path to the present. Often such perspectives may look back to the good old days to provide reassuring examples of the well-meaning but primitive approaches employed then compared with the 'scientific' and thoroughly modern, practices of the present (Bochel, 1976; King, 1964, 1958; Young and Ashton 1956; Le Mesurier 1935). Young and Ashton, writing some forty-odd years ago give an excellent example of this perspective :

The great temperance movement of the last century was the sole example of a service for the criminal which has had an uninterrupted progress toward a clearly defined branch of social work...If there has been a change in the depth and scope of the work, it has arisen out of the wider knowledge we now possess of human needs and motivation... (Young and Ashton 1956: 181-182).

More recently, this teleological theme has surrounded the emergence of the "What Works" initiative which has been driven forward by the Home Office and the Probation Inspectorate.

2) A transcendental perspective. This viewpoint presents modern day practice in probation as having been corrupted by various policies and initiatives which have served to diminish the originary purpose of probation. The values underpinning probation are assumed to be universal and timeless, lacking any contingent density through which they could be examined in terms of their historical specificity. Thus McWilliams writes that "[t]he web of policy, procedures and performance indicators woven around it has obscured the *central meaning of the probation system*" (1992: 14, emphasis added). Present day practice and organisation thus becomes a invested and colonised by the accretion of processes of bureaucratisation and managerialism.

3) Specific, critical perspectives concerned with the relationship between probation practice and wider social inequalities such as those predicated upon class, race and gender. These critiques focus on the way that probation's universal and timeless values tend to operate in ways detrimental to the provision of fair and appropriate services for working class people, women and black people (Carlen and Worrall 1992; Worrall 1990; Denney 1992; Walker and Beaumont 1981; Dominelli 1981; Hugman 1980).

4) Critiques of the actual role of probation in relation to what it *should* be about. These critiques see probation as failing to provide solutions which ought to be its concern. For example Nellis (1995a; 1995b) argues that probation's task should involve the provision of community justice as a central component.

It is of course not always a matter of identifying one particular discourse out of this list, but rather considering the way probation is discussed in terms of a cluster of assumptions and arguments drawn from these perspectives. It is also the case that probation has a very limited theoretical history. McWilliams has set out the most developed exposition of probation work in such terms in a quartet of essays which trace the "history of ideas" in the service (McWilliams 1983;1985;1986;1987). McWilliams sketches out what he sees as the dominant ideas within the service at certain key points during its history. He traces a shift from an era of "special pleading" through "diagnosis" to a point where he identifies the service as becoming subservient to policy considerations and correlative managerial practices (McWilliams 1992). The train of thought developed, however, I would still locate within the above category of transcendentalism: McWilliams sees probation as having an originary purpose which has become overlaid with other considerations as it has accumulated the historical sediment thrown up by the passage of time. I also would disagree with McWilliams that policy considerations were late additions to the probation service: in this study I firmly locate probation *within* broad bands of social policy without the support of which the service would not have taken the form it did over the course of the twentieth century. Such support, however, may need to be demonstrated by the production of evidence rather than by seeking to find it explicitly articulated as such.

The Present Approach

I want to develop a different argument to those set out above. Instead of assuming that today, the probation service is as good as it gets - since underpinned by a set of timeless and predominantly apolitical values- representing the teleological pinnacle of an evolutionary process moving from Police Court Mission through to today's service², this study takes another approach toward examining the relationship between the political and the institutional. Rather than assuming that politics tends to interfere with the 'pure' practice of probation, the perspective taken here is to examine the probation service as being one of many technical solutions that have emerged in modern society in response to a series of the political problems defined within a general political problematic of the social realm. The assumptions that underpin this approach hold that the modern state is involved in a constant definition and redefinition of the boundaries of the 'political', the 'social' and the 'economic' such that, at any particular time, the management and administration of certain areas of social and economic life are delegated to a realm outside of the strictly political, a realm patrolled and policed by experts, professionals and specialists whose apparently differentiated activities nonetheless function as a conjunctive device

between abstract political programmes and various specific facets of the conduct of daily life (Rose 1985; Donzelot 1980). From such a viewpoint, probation is one of many such expert technologies, utilising different techniques and epistemological vocabularies but emerging from a set of similar political concerns articulated within various programmes focused upon particular problematisations of social and economic life.

Within such an analytical perspective, the operational legitimacy and professional autonomy of these professions and experts is circumscribed by the systems of governmental regulation extant at a particular time. This suggests, then, that these various domains of expertise are contingent and therefore subject to possible renegotiation and refashioning either through the intervention of the state in reaffirming its sovereignty over a realm of hitherto devolved technical competency or by the reassignment of such a domain to a new apparatus of expertise. In understanding this shifting and fluid relationship between state and expert, I shall draw upon the methods, concepts and assumptions that characterise the increasing literature on ‘governmentality’, a concept originating with the French historian and philosopher Michel Foucault and subsequently developed in the work of others (Foucault 1991; and, *inter alia* Dean 1999; Rose 1999; Garland 1997; Barry *et al* 1996; Miller and Rose 1993; Burchell *et al* 1991; Rose 1989; Miller and Rose 1988).

Probation as Governance and the Changing Shape of Political Discourse

The background to the depiction of probation as a mode of governance is provided by the shifting configuration of industrial modernity during the 19th and *twentieth* centuries. From the decline of the *laissez faire* approach during the second half of the nineteenth century through to the contemporary advanced liberal ‘risk society’ of late or disorganised capitalism, probation has functioned as a technology of government. In using the term technology, I intend the meaning given by O’Malley (1993): “any set of social practices which is aimed at manipulating the social or physical world according to identifiable routines” (O’Malley 1993: 269).

The probation service emerged within a ‘welfarist rationality’ by which mechanisms of security predicated upon protection against the risky contingencies of life in economic capitalism were set in place and tethered to the social realm the series of mutual rights and obligations which bound citizens and state together in mutually beneficial compact. Government in such a democratic society is exercised through the impartial apparatuses of expertise and professionalism. Power operates in local and specific arenas delineated by particular agencies and institutions of expert knowledge which address particular problematisations of social life in a programmatic manner. The problematics created through these programmes saw the fragmentation of the field of poverty, which had hitherto formed a homogenous space within which the social and economic failings of the poor were for the most part, represented as a

personal and moral failing (Rose 1985; Garland 1985). The reconstitution of poverty as a series of intersecting and overlapping problematics by which the individual, structural and ethical dimensions of the lives of the poor were assigned to particular technical remedies, saw the emergence of the space of 'the social' (Donzelot 1980) a space traversed by a plethora of institutions and agencies dedicated to regulating and normalising its abnormalities. From being constituted within a moral discourse, poverty was reconceptualised within a pathological register, thus providing the rationale for prophylactic and ameliorative intervention via a medicalised model which itself introduced a measure of security into the general population (Proccaci 1994: 213). The role of 'social work', emerging from the various strands of late nineteenth century philanthropy (Garland 1985) involved a policing of this realm of the social *in the interests of all*, providing assistance and pedagogic tutelage into problematic areas of life such as child care, hygiene, contraception and so forth at the level of the individual (Rose 1985). For Foucault, this constant concern for the welfare of the population at an aggregate level and at the level of the individual forms one of the main characteristics of the political rationality of modern societies (Foucault 1988a:161). The social pathology which mapped out deviant and abnormal areas of social life identified crime as a one such pathological aspect in need of attention.

In contrast to the interventive nature of welfarist discourse, has been the emergence during the last 25 years or so of the *twentieth* century of a *neo-liberal* political rationality (Dean 1999; Rose 1999; 1996a; 1996b). The change toward neo-liberalism, it is argued, has seen a reconfiguration of wide and diverse areas of the public sector as the assumptions and concepts of this new rationality have impacted upon both organisational and professional knowledge and practice. This has particularly had an effect on areas of expertise such as probation practice where previously such expertise had been exercised in a semi-autonomous manner, with decisions made on the basis of professional knowledge and deliberations and incorporating a wide scope for the use of discretion. Neo-liberal governance encompasses models of social and organisational relationships and activities as analogous to those of the market: individuals will act rationally within the market situation in order to secure the most regarding outcomes. Where possible, such activity should be left alone by government – on the basis that markets have their own inertia and dynamics. Neo-liberalism is also a cautious approach to government, seeking to quantify and qualify the effects of activities – particularly such as those within the public sector. New approaches to the regulation of such activities do not rely upon the embedded trust which obtained in welfarist discourse toward areas of expert activity: instead there is an emphasis upon monitoring, measurement, evaluation and audit (Power 1997; Rose 1993). Through the construction of appropriate organisation metrics, neo-liberal government seeks to identify the impact and effectiveness of activities and to compute the cost of such activity.

It is not argued here that the shift toward modes of neo-liberal government constitutes some seismic break in political or epistemological discourse. In many cases there are process of adoption, accommodation and compromise which suggest that it is possible to identify 'hybrid' approaches in which both welfarist and neo-liberal concepts co-exist – albeit sometimes in an uneasy tension. There are also continuities. One continuous theme that spans the entire periodisation set out here is that of *security* and *risk*. The development of security has been a central dynamic in the shaping of the welfarist mode of governmentality that emerged after the second world war, a mode that saw the wide-scale installation of governmental expertise throughout the realm of 'the social', a site - or, more properly, an interconnected series of sites-located at the interstices of the economic and the private life of citizens. During the last twenty huff in the political rationality by which the state and its approaches years or so, there has been a sl to security have been organised. In particular, the concept of 'risk' has become a central organising motif for the operations of professionals and organisations (Beck 1992; Feeley and Simon 1992; 1994).

Politics and Practice

In this study, then, I shall argue that the practices of the present day probation service can be shown to mark a departure from the assumptions that structured the service for the first seventy years or so of its history and that this departure represents a wider transformation in the political rationality of the last twenty years or so in Western Societies.

I present this argument in terms of two complimentary and intersecting strands of empirical research, each of which focuses upon the discourse through which probation practice and organisation is articulated. The first will involve the delineation of probation's historical trajectory from its emergence in 1876 as a branch of temperance philanthropy through to the contemporary arrangements of the early twenty first century. This will set out the organisational activities of probation in terms of their correspondence to welfarist or neo-liberal problematics. Accordingly, within the period of welfare that runs roughly from the end of the nineteenth century through to the late 1970s, one can discern a certain unity of approach and practice in terms of a concern with the offender in which offending is judged in terms of a continuum of social pathology linking slight levels of deviance with more serious instances. Along this continuum, probation has attended to the 'inadequate' or 'maladjusted' offender, the individual who, through whatever series of causal experiences has failed to flourish as a 'normal' citizen. Under a welfarist approach, probation's task has been to restore the individual to 'normal' social functioning with an underlying logic of not only effecting the social defence of society against further offending but also of the provision of a service which it is the offender's *right* to receive within the apparatus of the welfare state. The society that has been wronged by the offender is

also conceived as having both contributed in some way to her offending and also as having a responsibility toward her as a member of that society.

In contrast, the shape of probation practice within a neo-liberal rationality is conditioned by individualising notions of *risk* and *rationality*. Risk is a condensation of the problematics of social existence such as unemployment, poverty, substance abuse and so on. Their contribution to the offender's behaviour is, within a discourse of risk, reduced to a probabilistic contribution toward an overall calculation of the likelihood of further offending. The individual is thus reduced to membership of certain risk categories upon which particular modes of practice seek to operate. Levels of risk evidence a lack of rational behaviour – an inadequacy in the appropriate decision making and self-enhancement activities of the neo-liberal individual (Archer and Tritter 2000). If the self-regulating nature of neo-liberal society requires self-regulating individuals, then those incapable or unwilling to acquire or demonstrate such skill and capacities become a risk to the functioning of that society.

This approach avoids some of the danger of constructing an account in which events within the probation service are taken as definitive moments of institutional history which represent an increasingly or decreasingly enlightened or liberal attitude toward the organisation of the service - thus insulating the account from any extraneous contemporary phenomena other than the specific aims of politicians and policy makers. Such teleological accounts may be readily be found in the historical literature of probation and, indeed in its own accounts of how it understands its historical development as marking a trajectory from an unenlightened if well-meaning beginning through to a scientific and knowledgeable contemporary form (Bochel 1976; King 1958; NAPO 1957; Young and Ashton 1956; Le Mesurier 1935). The limitation of policy studies is described by Miller and Rose who note that such studies tend to concern their enquiries with

evaluating policies, uncovering the factors that led to their success in achieving their objectives or, more usually, deciphering the simplifications, miscalculations and strategic errors that led to their failure (Miller and Rose 1993: 78).

This focus on policy as part of an overall teleological development of modern society makes widespread assumptions that the centralisation and bureaucratisation of institutional power around various rationalities of the government of individuals necessarily represents *progress* toward the present day. As such, these approaches provide exemplars of modern thought rather than analysis or critique as they reframe and represent the past in terms of the conceptual parameters of the present. They present arguments whose logics, lines of argument and epistemological boundaries betray their limited and present-centred perspective. Thus Bochel, for example, finds that it is possible to identify that moment at which “the situation was ripe for a decision to be taken to introduce a government Bill to bring in a system of probation” (1976: 23). In a similar vein, Young and Ashton, writing some 20 years before, argue that the

changing nature of probation work during the *twentieth* century should be attributed to the “wider knowledge we now possess of human needs and motivation” (1956: 182). Such a teleological approach lacks an ability to detect the nuances and subtle lines of development, the contradictory discourses and the shifting alliances between political objectives and the agencies, institutions and individuals who provide the technical means for achieving them. At the same time, these approaches attribute to dispersed sets of objectives, interests and discourses a coherence and intentionality suggestive of progress at the expense of analytic detail, critical exposition and historic specificity.

The study of rationalities and technologies of government, in contrast, is not limited to the boundaries and parameters delineated by any particular policy or policies. Instead, treating the activity of an agency such as probation as a technology of government allows the development of an analysis in which the agency under study is considered as an exemplar of a mode or modes of power by which individuals are socially managed. This approach provides a more subtle and sophisticated means of articulating points of difference and similarity with other contemporary governmental activities in order to locate agency activities within a wider network of government. In turn this allows a more fluid and dynamic analysis, emphasising the cross-fertilisation of ideas between different spheres of government and highlighting the way that a particular practice may contain resonant, dissonant or entirely contradictory themes, assumptions and arguments when mapped onto the larger fabric of social regulation and administration.

The use of Foucauldian approaches to analyse the parallel trajectory of probation and modernity provides a less conventional means of considering the relation between state and power. In the dense and complex series of knowledges, agencies and institutions that inform the regulation and administration of the modern state, Foucault sees a dispersion of power, a blurring of the distinction between the public and the private spheres as agencies come to exercise power which are not - in a formal sense - ‘political’: The state consists in “the codification of a whole number of power relations which render its functioning possible” (Foucault 1980: 122).

This conception of power and its effects goes beyond conventional analyses of the exercise of power and the aims and goals of the state. It moves away from Marxist approaches in which the shaping of individual consciousness is an effect of structural conditions and vested interests that mask the true operation of power by obscuring the ‘real’ interests involved in productive relations. Similarly, this approach rejects functionalist depictions of the course of institutional change in modern society as a constantly adaptive and ultimately beneficial, response to political, social and economic change.

The governmental approach also allows a finer and more focused representation of the workings of modern power in advanced liberal society. The crude use of Foucault’s work on power would tend toward a vision of a society saturated with mechanisms of control, a

‘disciplinary’ or ‘carceral’ society as Foucault put it (Foucault, 1977; 1991). Yet in modern liberal society, despite certain restrictions and constraints, the individual entertains a wide ranging potential for autonomous action and freedom. Although it might seem at first paradoxical to depict such a society of autonomous individuals as governed by a plethora of interconnected and overlapping governmental agencies, it is precisely the intersection of freedom with governmental power that makes Foucault’s later work so interesting. Rather than exhibiting a totalitarian concern to oversee all aspects of social and economic life, Foucault argues, the state has colonised a whole network of sites of intervention through the delegation of government to appropriate experts operating upon problematisations in these sites. By intervening with the individual in their normative enterprises, these experts are able to co-opt and enlist those individuals into aligning themselves with political enterprises, behaving in ways which could not be enforced so efficiently through the use of force since the individuals come to *recognise* the benefit of such an alignment. Seen in such a way, it can be argued that modern liberal society not only relies upon, but actually needs, as a condition of its existence, this autonomous individual (Gordon, 1991; Foucault, 1988: 84).

This concern with how power operates at certain specific and bounded levels within the interstices of freedom and autonomy impacts upon how we understand social control and the ways in which individuals are managed and directed toward behaviours that correspond to political aims and ambitions. These modes of control then, may be found outside the realms of overt coercion and enforcement. They may also operate in relatively autonomous and ~~disconnected ways rather than making up the networks of control and surveillance suggested by~~ some commentators (Cohen 1985). Rather than looking at power as emanating from the conscious intentions of the state, we may find it profitable to study “softer” forms of power which operate on the basis of knowledges and techniques exterior to those of overt discourses of control and domination (Foucault 1982).

Accounting for the methods and modes of governance, then, involves study of “*how*” questions which relate to the ways in which particular areas of social and economic life have been defined, debated and devolved as problems whose solution is pertinent and amenable to a particular area of expertise. Thus “what is sought is not an exhaustiveness of evidence but an intelligibility of problematisations” (Osborne 1999:175).

The Discourse of Pre-Sentence Reports

The second empirical strand of my study consists of an examination of the contemporary discourse of probation as articulated in pre-sentence reports written for the courts. These texts reflect the articulation of the assumptions and values of probation discourse as it is applied to the lived reality of individuals’ lives and criminal actions. It is argued that the report serves as an “inscription device” by which the messy, chaotic and disparate events,

circumstances and experiences are rendered into a format that enables and suggest intervention as a logical progression from the arguments presented.

The importance of the role of language and Foucault's work on discourse highlights a need to attend to the textual, discursive aspects of probation. Within these reports are contained discursive models of the individual, notions of the causes and correlates of crime, moral assessments, and a series of descriptions, explanations and analyses which seek to render the offender into a synoptic biography which will inform the sentencing decisions of the court. Through an analysis of this discourse, I seek to reconstruct the discursive patterns encountered within the reports into a systematic and structured account of their *functions* – the ways they construct and construe the individual, the emphasis they place upon particular information – in short, a model or diagram of their problematising function, a model open to discussion and debate in terms of its resonance with the trains of political rationality mentioned above.

The Layout of this Study

Chapter 1 describes Foucauldian concepts of power and governmentality and their applicability and relevance to the present study. These modes are then reworked into a basic model of the changes in political and governmental logics which made up the shift to “welfarism” and which indicate the late *twentieth* century shift toward models of “neo-liberal” governance.

Chapter 2 presents a traditional chronological account of the structural and organisational patterns of probation in terms of legislative changes, policy innovations and so on. This chronology provides a basic framework upon which to sketch the discussion of governmental activity in the following chapter.

Chapter 3 depicts the history of probation in terms of its governmental functions and with reference to the political rationalities of welfarism and neo-liberalism. Organisational and epistemological shifts are dealt with in terms of their resonance with these rationalities.

Chapter 4 sets out a discussion of the probation report. Moving from an ad hoc and often swiftly compiled statement to the court in which the missionary sought to provide a moral synopsis of the defendant, the format of reports condensed around that of the Social Inquiry Report. Gradual changes toward neo-liberal forms of practice see the emergence of the more formal, codified Pre-Sentence report with a heavy emphasis upon consistency and conformity. In the contemporary probation service, the introduction of a new assessment instrument, Oasys, may spell out the end for the traditional, narrative report in which the contents are elicited through conversation at interview.

Chapter 5 maps out the research approach to be taken in analysing the discourse of pre-sentence reports. This approach draws upon the work of Foucault as well as others working in the field of discourse analysis. The function of discourse as being active and constructive is

discussed with an emphasis upon the political potential of language for shaping understanding. This approach argues that the way reports are written is not politically neutral and does not provide a “mirror of nature” but creates objects of thought, objects which have implications for those whose lives are so depicted in that sentencing is likely to take into account the ways in which offenders are represented – with all the consequences that may ensue.

Chapter 6 analyses the 50 pre-sentence reports sampled for this study. The uses of language and the objects which emerge in the reports are codified and categorised. It is argued that PSR writers seek to identify governmental aspects of offenders’ lives – traces of the potential for self-regulating behaviour in the form of, for example, employment, stable affective relationships and familial commitments and so on. This issue of the potential for governance forms a key project of the pre-sentence report. Those with a high potential for self-governance can be punished with the ‘sharp shock’ of community service, whereas, where evidence of such governance is missing, proposals in reports – and the subsequent sentence – are likely to be more interventive.

Chapter 7 pulls together the themes of the research, discussing the organisational and technical changes identified as well as the continuities which span the transitions from one political rationality to another. The organisation of the probation service is identified as clearly representing a shift to neo-liberal governance, particularly so with the inception of the new National Probation Service in April 2001. Although it is argued that the pre-sentence reports may be better understood in terms of their ‘hybrid’ nature, it is also pointed out that proposed changes to the practices of social inquiry may well have a greater effect than those which have taken place prior to the time of writing. The author acknowledges that he is writing at *a time* of change rather than writing *after* such a time.

1 Foucault and Power: Governing Modern Society

The assumptions underlying my examination of probation practice in this study are based on an understanding of power relations in modern industrial society which draws heavily upon the work of Michel Foucault and those who have developed and elaborated certain elements of his work in recent years. In this chapter, I discuss Foucault's conceptualisation of the nature of power and its exercise in modern society, using this as a political lexicon with which to map macro governmental strategies and discourses onto specific modes of administration, regulation, intervention, persuasion and exhortation of the individual which operate at an "ethical" level whereby the individual herself is enlisted in forms of self examination and self-regulation that result in "normal" behaviour.

This model of power provides a conceptual background against which to depict the interconnections in modern society between the exercise of power and authorised forms of knowledge and expertise. This connection between power, knowledge and subjectivity is important since probation occupies a role within the criminal justice system which involves it in the generation and provision of knowledge of offenders through its discursive practices of social inquiry whilst also engaging them with a "technology of the self" in its supervisory activities (Foucault 1988). In setting out probation's role in acting as a technical solution to a particular social problematic of modern society, I deploy the concept of "governmentality" as a schema for analysing the way that power operates in this society to govern "the conduct of conduct" of institutions and individuals.

Firstly then, as a means of leading into a discussion of the relevance and utility of Foucault's work for this study, I set out a brief discussion of "traditional" theories of power in terms of their utility in providing diagrams of power that could be applied to an analysis of probation practice and contrast these with the models and modes of power provided in the work of Foucault.

Theories of Power

The conceptualisation of power has been the subject of widespread debate and contestation (Clegg 1989; Lukes 1986). Within traditional theoretical expositions- as far as they might offer insights into the articulation of power within probation practice-power can be broadly understood as having certain dimensions which pertain to the ability of one person to affect the behaviour of another (Dahl 1957), the ability of those with power to control and set the decision-making agenda of the less powerful (Bachrach and Baratz 1962; 1963) or thirdly, to actually shape the consciousness of the less powerful (Lukes 1974).

From the first of these perspectives, power represents the ability of one social actor to intentionally influence the behaviour of another, what Russell (1938) refers to as “the production of intended effects”. Similarly for Weber (Weber 1978: 53) power is the ability of one social actor to carry out his or her will in the face of resistance to that will whilst power-elite theorists such as Mills (1956) also see power in terms of domination, a “zero sum” game in which the use of power necessarily impacts in a negative way upon others. For Bachrach and Baratz, the agendas on which the populations of democratic societies make decisions are shaped by the influence of interest groups whose own power keeps certain issues off the agenda completely, forestalling debate upon uncomfortable or threatening issues (Bachrach and Baratz 1963).

Marxist theories place a firm emphasis upon the structural asymmetries of power inherent in capitalist society. For Poulantzas, for example, power is the “capacity of a class to realize its specific objective interests” (Poulantzas 1973: 104). Moving away from economic determinism but also working from a Marxist perspective, Gramsci (1971) argued that class domination or “hegemony” was enabled by the possession of the capitalist class of an ideological apparatus through which the consent of the working classes was secured. This “third dimension” of power, the ability to secure consent to acting against one’s real interests represents, for Lukes (1974), “the supreme exercise of power” by which power is deployed in order to invest individuals and groups with desires which are not theirs, which are not in their own interest but are those which represent the interests of the powerful. This third dimension, then, acts upon those subject to power “by controlling their thoughts and desires” (Lukes 1974: 23).

How then, do these frameworks of understanding provide a satisfactory means of analysing probation practice? The first model might offer a crude way of conceiving the probation officer: by virtue of his or her official authority the officer exerts power over the individual offender, giving instructions, orders and so forth and this could also shape the choices and decisions made by the probationer. But when one considers the limited nature of much probation contact over this century -often an hour or less per week- the coercive possibilities seem somewhat limited. From the Marxist perspective, probation forms part of the state’s ideological apparatus, working as part of an extended network of agencies to secure the cohesion and order of capitalist society. Probation would thus occupy a role both in the reproduction of ideology via its role in assisting, advising and so forth but also would have a repressive function, by virtue of its structural relationship to the criminal justice system. This form of critique has been extended in specific ways to social work and probation, linking various working practices to a more extended series of strategies and tactics of domination played out across the tensions inherent in a society in which one class rules another:

Social work has expanded to include new (and not so new) tricks, such as community work, group work, welfare rights work etc which when professionalised, end up by being the same sort of mechanism of control as traditional casework, often with the additional merit of being

less expensive for the ruling class. (Case Con manifesto cited in Walker and Beaumont 1981: 92-93).

Such a catch-all model, then, allocates probation a role in securing the consent to governance of a subordinate class against their real and objective interests. Yet there is no room ~~here for fine detail. In terms of studying the nuanced changes in probation practice over time, we~~ are confronted with a blanket explanation which locates *any* activity by the agency within a much wider explanatory model. But, this renders the ad hoc, disparate and diverse forms of probation organisation and practice irrelevant, dispersing them within the wider dynamics of class rule. Thus the changing nature of knowledge and techniques and their implications are of no real concern, to be recoded as “tricks” of the ruling class. Can such a meta-explanation serve any real purpose, arguing as it does for one global conception of a “true” analytic perspective within what almost generalises to a conspiracy theory? Given the fragmented, diverse and eclectic nature of probation practice over the course of the *twentieth* century, probation would seem a particularly inefficient and haphazard form of achieving hegemonic domination, all the more so given that for some 80 years, central government seems to have betrayed little real interest in probation, giving it a slap on the back and a nod of approval from time to time.

In examining the discourse of probation over the course of the *twentieth* century, it becomes clear that the rationalities and logics within which its activities are debated, discussed and delivered are not those of repression or control. As one early probation officer put it, the task was of “endeavouring to assist in promoting the welfare and happiness of our fellows, each by individual example and personal service” (Holmes 1915: 349). In a similar vein, Chapman argued that the “secret of good probation is friendship, the care of one soul by another” (Chapman 1937: 274). Flexner and Baldwin rejected the concept of probation as serving to provide some form of constant vigilance over the offender: “[m]ere surveillance is not probation. Probation is an intimate and active relation which deals with all factors in [the offender’s] life” (Flexner and Baldwin quoted in Potter 1927: 31). The punitive side of probation (such as it was) is often not merely toned down within this discourse but actively dismissed: “[t]he aim of our work is less the protection of society by punishment of individuals than the protection of individuals, as well as society, by means of reformation – re-formation” (de Constobadie 1930: 42). Or, later still, “[t]he probation officer is concerned with the reformation of the offender and with changing an anti-social attitude or pattern of behaviour into something more acceptable to the community” (East 1954: 120). The National Association of Probation Officers, in a memo to the Labour Party’s study group on crime argued that probation “is entirely forward looking and non-disruptive and works toward the preservation of society” (quoted in Labour Party 1964: 46). Even the statutory powers which were available to probation officers tended rarely to be deployed, with officers preferring to rely “on control by influence rather than by direct sanctions” (Lawson 1978: 65).

Clearly, these expressions, made over a period of sixty years or so, do not reflect an unchanging unified rationality of probation. But, even given the epistemological shifts in the architectonics of probation discourse, one sees a certain continuity in the conception of probation as not repressive but actually *productive*, enabling, promoting, restoring and preserving certain behaviours. A satisfactory analysis of power and probation practice, then, should address the specifics and details of *how* the service operated, on what forms of knowledge were such practices predicated, within what logics and vocabularies were crime and criminality construed and understood in terms of causal and contributory factors and how did these factors shape the resulting forms of intervention? Such an analysis would, I suggest, provide a means of sketching out the concrete operations of probation without generalising its activities to a series of gestures that either echo the hidden hand of the state in its orchestration of social life or emphasise the personal potential for coercion of the individual probation officer.

It is in search of this concrete model of *how* the probation service operated, rather than *why*, that I have used Foucault's work and that of those who have elaborated and extended his concepts and arguments as an analytic framework for this study. I see this work as side-stepping some of the problem areas I have mentioned above and providing new and novel ways of depicting the practices of the probation service in its daily work with offenders. Immediately below I discuss salient characteristics and concepts emanating from Foucault's work on power, with a particular emphasis upon his depiction of power as being productive rather than repressive. These concepts are then linked into the more general framework which Foucault has termed *governmentality* (Foucault 1991) and which has been the subject of an expanding and wide ranging research literature.

Foucault and Power

Foucault's conception of power is useful in addressing the subtle dynamics of power in modern society in that it depicts power as fluid rather than central, as operating at differentiated and disparate levels rather than in a top-down fashion. Foucault argues that power is *productive* rather than repressive, that it operates in specific locales, that it is articulated in a mutually conditioning nexus with forms of knowledge and that its expression is given authority through the accreditation of certain agencies and individuals as privileged to speak on particular topics at particular sites of institutional activity.

Foucault depicts power as operating in a myriad of sites and relationships through the operations of agencies and authorities not traditionally considered to be within the province of political thought. These networks or capillaries of power operate at the level of localised tactics and strategies predicated upon particular forms of conduct pertaining to the day to day behaviours of human beings. This regulation of conduct across the terrain of the "social" operates through a loose network of agencies, authorities and experts whose accredited authority

over a particular domain enables them to define and delineate what is problematic and what normal about that domain (Rose and Miller 1992).

In understanding how this assemblage of agencies and institutions exercise power, Foucault provides a conceptualisation which is more informative and useful than merely seeing them as part of some repressive apparatus whose role is to secure conformity with a centralised plan. Foucault depicts power as productive (Foucault 1978:85 ;1980:92; 1980:139; 1982). As Foucault puts it, power “produces; it produces reality, it produces domains of objects and rituals of truth” (Foucault 1979: 194). This productivity obtains from the way power is imbricated within the structures of knowledge. Power is active within the systems of representation and classification by which spheres of social and economic life can be known and acted upon. What is “true” about the objects and events within a particular domain is enabled by a discursive vocabulary which is historically grounded, contingent and limited (Foucault 1980:131). From this point of view, then, we cannot expect truth to enable a perspective which stands outside or apart from political processes and procedures. Knowledge and the ascertainment of truth itself are political activities.

The political effects of power cut though to the very heart of what we believe about individuals, society and our own subjectivity. For Foucault, the individual does not form a pre-given entity upon which power operates but rather “is the product of a relation of power exercised over bodies, multiplicities, movement, desires, forces” (Foucault 1980: 73-4). There is then, no “true” subjectivity or identity to be liberated or reached by emancipatory techniques and practices.

Foucault reaches what might seem at first glance an extraordinary position upon the operation of power in modern society. Our conduct is shaped by relations and practices of power but, rather than repressing us and forcing particular forms of behaviour, power operates *through our freedom*. Power structures the “possible field of action” for individuals, “guiding the possibility of conduct”. In this sense, that of a relationship in which “certain actions modify others”, power is a question of *government* operating within, rather than above, society (Foucault 1982: 221).

This notion of government, of “the conduct of conduct”, enables us to begin to examine the political effects of institutions and agencies which apparently have no connection to the formal processes of politics. Various agencies concerned with health – child guidance clinics, school medical officers, district nurses and midwives –can, from this perspective, be seen as operating to secure outcomes which are resonant with wider political aims, guiding the conduct of those who are subject to their practices but in ways which involve those individuals, enlisting them in activities which “govern” their conduct.

“Government”, then, from this perspective, encompasses a wider, more disparate notion of power than do reductionist and essentialist accounts of power which limit analysis to the

assignment of power relations as emanating from the desires and aims of the state. The governmental activities of groups and individuals accredited to carry out such activities are underpinned by the *knowledge* of such agents to act in accredited ways. Thus certain people may speak in ways accorded epistemological primacy over the everyday discourse of others. This leads us to consider the importance of knowledge to Foucauldian conceptions of power.

Power and Knowledge in Modern Society

The power relations extant within society, argues Foucault, sustain and are mutually conditioned by, the forms of knowledge that co-exist in that society:

Power and knowledge directly imply one another...there is no power relation without the correlative constitution of a field of knowledge, nor any knowledge that does not presuppose and constitute at the same time power relations (1979: 27).

Within modern society, spanned as it is by various modes of power, these power relations are inextricably linked with the rise of the various knowledge bases of that society. Knowledge enables government. Through making the social world knowable, knowledge enables it to be governable. At the same time, only some discourses are recognised as 'true' and having the ability to pronounce the truth within particular settings and contexts – "truth is a thing of this world" (Foucault 1980:131). One example of such a veridical discourse is medicine, which is given the authority to pronounce upon its patients and then to act accordingly. Another is probation, where the probation officer's report carries a weight and authority privileged over other subjective accounts in court, such as the defendant's own version of events in order to provide sentencers with a 'true' account upon which a suitable sentence can then be based.

For an area of interest to be subject to intervention and regulated – to be 'governed' in Foucault's term -it must be rendered in some way problematic and therefore suitable for regulation. This requires a knowledge which provides the underlying concepts, objects and parameters for thinking through this particular problem area. Thus knowledge provides programmes of government with the conceptual vocabulary within which the nature and extent of problems can be discussed, analysed and suitable solutions construed: to the extent that social reality is *knowable*, it is also *programmable* (Gordon 1980: 248; Rose and Miller 1992).

The world, then, is made amenable to government through discourses which construct the objects and subjects of such knowledge. Knowledge provides a rationale for government but government also provides a rationale and purpose for knowledge, for example in the provision of research resources, the acknowledgement and authorisation of epistemic and professional authority, the acceptance of findings as a basis for action. Institutions and their practices of knowledge gathering, then, are also vehicles of *government* (Simons 1995:30).

Government, power and language

The emergence of mechanisms of power predicated upon knowledge brings us to an important aspect of the focus of Foucault's work: the importance of language. One of the key characteristics of modern society is the way that social relations have come to be mediated by discourses which are embedded into the contexts of everyday and institutional activities. By studying the forms of knowledge deployed within particular discourses during a particular period, we can come to understand more about how practices are constrained by immanent structures of knowledge during that period and can begin to study how discourses do not so much represent the things about which they make some form of statement-thus denying an exact correspondence between word and thing- but rather attempt to *organise* those things (Minson 1986: 124). Foucault, however, sees social practices as informed by various discourses- groups of assumptions, statements and beliefs about particular areas of social life that count as knowledge to those who articulate those assumptions and ideas in practice. Within such 'discursive formations'

statements may not be 'true' in the sense that they are systematic products of a specific epistemology but they are dealt with by practitioners as if they are true (Dant 1991: 125).

Discourses, then, are not just linguistic entities: they have a material articulation in practice and form "regimes of truth" through which certain topics can be known (Foucault 1980:133). Power is exercised in discourse in relation to the hierarchical status of speakers and discourses - there are 'orders of discourse' constituted by practices of ritualisation and institutionalisation by which status is accorded or prominence given to speakers and discourses (Foucault 1971). Thus the impact which discourses have upon the everyday lives of those who are the subject of those discourses is linked to the position of the person articulating that discourse (Pêcheux 1982: 111)³.

Power then, inherent in, and an effect of, discourse, is exercised through language - the spoken word of the expert, the texts and writings of professional knowledge, epistemological codifications and so on. It is exercised through the words of those who are authorised to 'know' what is true and what is not. On an everyday level, we share discourses which constrain the ways in which certain subjects are discussed. We are socialised into the use of discourses either through daily life or through more formal processes of education and the acquisition of professional status. On these more specialist levels, we utilise or depend on those who utilise, specialist vocabularies which are assumed to provide

a truth that makes it possible to employ, when dealing with the nature or history of knowledge, a language that will be true (Foucault 1970: 125).

Clearly the ability to impose meaning into the lives of other involves a certain relation of power although for Foucault there is no necessary intentionality in the exercise of such power since that power is conferred by the discursive positioning of the speaker (Foucault 1972:50).

Foucault depicts various modes of power, each of which have significance for understanding the nature and exercise of power in modern societies. Below, I discuss these as a preliminary to my outline of how governmentality combines these modes within a general model of the operation of power in modern democracies.

Sovereign Power and the Rule of Law

Foucault argues that state-centred accounts of power are inadequate, that in political theory we need to “cut off the King’s head” and to locate power at its local levels of operation (Foucault 1979:88). In order to begin to move toward this localised research focus, I begin now by considering Foucault’s depiction of state-centred power, what he terms *sovereign power* (Foucault 1977).

Under the absolutist monarchies, power was the prerogative of the monarch. The major capability of the sovereign was the ability to make and enforce, the law. This power Foucault labels ‘juridico-discursive’, that is to say a power imbued with and deployed in support of, a prohibitive and negative function: the law-maker forbids and punishes those who enact the forbidden (Foucault 1980: 121).

Such a power, Foucault argues, was above all the power of life or death: transgressions against the sovereign tended to be dealt with by spectacular and bloody revenge upon the gallows, the gibbet or the block (Foucault 1977: 137-8). By the symbolic enactment of the sovereign’s displeasure upon the body of the transgressor, the affront to the natural order of sovereignty was erased and order restored.

The enforcement of this power, however, was crude and excessive: it relied upon the punishment of law-breaking, generally by the employment of highly visible and exceedingly violent means of punishment and execution. However, there are limitations to the efficacy and capability of sovereign power to affect the conduct of individuals. Primarily, the exercise of sovereign power is reactive: it has to await transgression before it can make itself felt. Thus it relies upon the individual’s reaction to the law’s ability to deter, making it haphazard. It is *inefficient* in that it relies upon a dramatic and specific response to any transgression in order to redress the symbolic damage done to the sovereign (Foucault 1977:47). There is also a homogeneity of approach in that it admits of no differential levels of motivation or culpability involved in transgression, since it is primarily preoccupied with either guilt or innocence. It is, therefore, not attuned to difference, rendering it inflexible in complex situations. Finally, the reliance upon a public spectacle using the methods of the slaughterhouse opens the way for public contestation of the meaning of the act of punishment and thus resistance to it, thereby

threatening the legitimacy of the sovereign (Foucault 1977:59). Foucault here refers to popular dissent and even rebellion at executions when the spectators sometimes took the side of the condemned, thus challenging the legitimacy of an operation designed to reinforce the power of the sovereign .

Sovereign power, then, is a mode of power embodied in and imbued with, the concept of the law. In its 'purest' form, it represents the direct control over the activities of government by the political apparatus of the state in which the law partakes of a "juridico-discursive" role, proscribing certain acts and behaviours. With the advent of liberal democracy, where individuals are *represented* by the apparatus of government and are therefore supposedly largely free from interference in their day to day business and private lives, the exercise of sovereign power becomes problematic. The liberal democracy that emerged at the end of the nineteenth century has had to develop ways of governing that incorporate the pre-suppositions of the political rationality of liberalism, in particular, liberalism's emphasis on the need for limited governmental intervention (Burchell 1991; 1993). Simultaneously, however, the enforcement of the law in modern society has moved from this sovereign mode to one in which the law is qualified and modified by various agencies of expertise charged with the recognition of extra-legal factors and their effect upon the individual's status as a legal subject (Foucault 1981). This has resulted in the Law, as the expression and vehicle of sovereign power, being conditioned by discourses of *order*, discourses whose rationalities are predicated upon categories of normality rather than absolutes. As a consequence, says Foucault, the law functions increasingly as a norm, relying upon the knowledges of other agencies to assess and assign measures of normality (Foucault 1978:144). Foucault identifies norms and the enforcement of normative standards of behaviour as the concern and focus of another type of power, *discipline*.

Disciplinary Power

Disciplinary power emerged as a response to the new problematics of the ordering, administration and regulation of behaviour in the emergent industrial society. Forms of regulation that had developed during the pre-modern period such as military drill and organisation or the enforced chronologies of monastic regimes provided a template for the regulation of conduct within particular delimited areas of modern society (Foucault 1977). The acceleration of social and economic change inaugurated by the emergence of industrial capitalism incorporated these pre-modern forms of organisation and regulation into new and wide ranging practices, particularly those involved in economic processes and located in particular institutional sites.

The generalised techniques of discipline migrate from site to site, says Foucault, such that modern society is a *disciplinary society* (Foucault 1977). This notion of the need for the alignment of the individual with the regularities necessary for the efficient and stable workings

of modern society echo Hobbes' remark that "man is not fitted for society by nature, but by discipline" (Hobbes, quoted in Gordon 1991: 14).

The object of disciplinary power is behaviour at the level of the individual. It operates privately in delimited, localised spaces, without the rituals and spectacle that accompanied the exercise of the power of the sovereign. In contrast to the negative mode of sovereign power which inscribed the displeasure of the sovereign upon the offender's body, reinforcing the codified prohibitions of the law, disciplinary power exhibits a productive focus. The body is subject to constraints and detailed regulation not to forbid or prohibit but to enhance its capabilities and capacities, to render it more productive (Foucault 1977:194).

The focus of this power, then, is upon the identification and correction of deviations from norms of comportment, through the deployment of a "micro-physics" of power predicated upon surveillance and correctional intervention (Foucault 1977: 26). Such a power acts upon the deviant who occupy various positions upon a continuum of transgression linking the smallest divergence from the norm through to the gravest misdemeanour (Foucault 1977:303). Disciplinary power subjects the undisciplined individual-the criminal, the slothful worker, the mentally ill, the recalcitrant schoolboy, the wayward young woman, the workshy, the feckless, the vagrant - to the control of others through the enforcement of routines based on meticulous detail, creating modes and patterns of appropriate behaviour into which individuals are required to insert themselves (for example, the prison routine, the factory production line, the school timetable, the children's home), with, where necessary, correctional intervention being administered to introduce, maintain or restore, regular and disciplined habits (Foucault 1977; Clegg 1989: 167). The major import of this is that punishment turns from retribution and vengeance against transgression and becomes oriented to *managerial* approaches, utilising surveillance, examination and corrective intervention to align behaviour with normative standards.

Bio Power

In modern society, government increasingly has drawn upon knowledges of the population in order to design macro-political categories related to the preservation and enhancement of that population as a resource. Categories such as those related to environmental health, hygiene, epidemiology, mental well being, competent child-rearing and the display of norms of paedological development, go to make up this "bio-political" sphere, through which the well-being of the social body can be enhanced and its categories used to identify problems and barriers to such well being at a local and individual level (Foucault 1978: 147).

A major site of bio-political power has been medicine. Many of the overall targets of the new interventionist methods of government into social life were informed by medical knowledge, knowledge that informed a 'general police' of health (Foucault 1980: 171). In the

growing concern over the condition of the new urban spaces of modern society, interventions focused upon those areas where disease was perceived as most frequent and virulent. By focusing interventions upon variables identified as damaging to the social health, there emerges a new discourse of population, a knowledge based on aggregate categories of population and which maps onto the lives of individuals. Within this discourse, theories, techniques, policies and normative ideals are brought to bear on areas of social life that consequently acquire a new visibility and materiality. Expert knowledges - the 'human sciences' –come to reflect in many of their activities, the role of the doctor, forming "part of a system of administrative and political control of the population (society as such is considered and 'treated' according to the categories of health and pathology)..” (Foucault 1991: 67). Through the pursuit of various programmes of environmental and epidemiological reform, an ever increasing number of such experts come to act as “programmers of a well ordered society” (Foucault 1980: 176-177).

Various technical approaches support this exercise of power. The development of statistical techniques for analysing the actions of populations created a new means of 'knowing' the actions of individuals as an aggregate phenomenon whilst the utilisation of statistical methods provides a discourse “representing the domain to be governed, its limits, characteristics, key aspects or processes, objectives and so forth..” (Rose 1989:120). Through the knowledge of these experts, power comes to be exercised in new shapes and forms via technologies concerned with the quantification and measurement of populations⁴:

techniques of notation, computation and calculation; procedures of examination and assessment; the invention of devices such as surveys and presentational forms such as tables; the standardisation of systems for training and the inculcation of habits; the inauguration of professional specialisms and vocabularies.. (Miller and Rose 1990: 82).

The Pastoral Project of Modern Society

In the arrangement of various discourses and practices within the modern state, the governmental project has come to address the needs and interests of the population in terms of its totality as an aggregate entity with its own characteristic needs and dispositions, thus *objectifying* the individual as the bearer of a series of variables derived from demographic and statistical knowledge which enable a focus upon “the welfare of the population, the improvement of its condition, the increase of its wealth, longevity, health etc.”(Foucault 1991:100). By using such this conceptualisation, the individual may be measured and assessed against various standards of normality - intelligence, physical or mental health, behaviour or sexuality. This institutionalisation of welfare - understood as a series of interventive and regulatory activities predicated upon a particular knowledge of social life – comes to function in a normalising and regulatory manner: “One of the most important features of modern society is the role played by welfare as a mode of power and knowledge in forming the social” (Hewitt 1983: 75).

But the objectification of the individual is only part of the story in modernity. Parallel to the concern and attention to populations and their health and well being, the governmental state is also concerned with the population in terms of its singularity, at the level of the individual, his or her aspirations, desires and wishes. This focus is at the level of *subjectivity*. Since, in the liberal democracies of western society, individuals exercise a formal autonomy as citizens, there are limits to the extent to which the state will subject them to coercion and force -an approach at odds with the philosophy, aims and objectives of modern liberal government. The links between governmental rationality and the actions of individuals, then, provide a potential for mechanisms of power to operate at optimal efficiency, by enrolling the individual within various projects and programmes. Conformity to such a project at this level of the individual needs to be established less overtly and forcefully with the result that

To the extent that authoritative norms, calculative technologies and forms of evaluation can be translated into the values, decisions and judgements of citizens in their professional and personal capacities, they can function as part of the 'self steering' mechanisms of individuals (Miller and Rose 1993: 92).

This creation of the individual as an active subject within various relations of power is, for Foucault, a product of the increasing aim of the modern state to enact a form of 'pastoral' power over its populations (Foucault 1981; 1982). Pastoral power originates in religious concerns over the health and well-being of both the individual and the community. This pastoral power is rooted, Foucault argues, in the practices of Christianity, particularly the use of confessional techniques. Over time, this pattern of power has become sedimented into practices of government in a secularised form (Foucault 1982: 214). As a result, the concern of pastoral power is more 'worldly', focusing upon health and well-being in terms of the development of the capacities and potentials of individuals. This well-being is enabled by the development of a comprehensive knowledge of the individual and the accumulation of such knowledge has become the province of the expert and the professional.

In modern society, a large part of this knowledge will be collected -in a genealogical echo of its distant origins - via the use of confessional and assessorial techniques: the psychiatrist's couch, the social worker's interview, the probation report, the psychological assessment and so forth . In each of these practices, the expert tries to enrol the individual in the project of managing him or herself following a synoptic assessment of the extent and nature of the problem, acting as a guide toward the truth. These approaches focus upon the individual recognising that this project of self management is in his or her own interests, and thus actively seeking to be part of such a process (Rose 1990).

An accompanying means of incorporating individuals into processes of self-management has been the development of ways of ensuring the individual's security within society in the face of risks. In modern industrial society, such risks have been particularly linked

to the economic process, with the development of welfare systems representing a way of reducing the damaging effects of being unable, for example, to take part in economic activity due to unemployment, sickness or injury. Another area of risk is that of crime and the way it is debated, problematised and solutions offered for its prevention, reduction or amelioration in terms which pertain to the calculability of risk (Feeley and Simon 1992; 1994).

Modern western society then, has been characterised by a shift in which the exercise of power has moved from the enforcement of the Law in pre-modern times through brute force in order to maintain legitimacy through to the development of a “series of specific state apparatuses” whose aim is the provision and development of various means of ensuring the security and welfare of the population through individualised techniques -what Foucault refers to as the ‘individualising tactics’ applied at various sites amenable to such intervention “the family, medicine, psychiatry, education and employers” (Foucault 1982: 215). Foucault describes this network of agencies as comprising a series of ‘judges of normality’, since their projects are concerned with the maintenance and replication of normality where ‘normal’ is understood as a kind of average or appropriate location on a continuum provided by a particular epistemology or ‘human science’ (Foucault 1977:304). These intersect with and complement, macro-political approaches based upon bio-political discourse.

To the extent that these approaches enlist the co-operation and active participation of the individual in the activities of these agencies of regulation, administration and normalisation, it is possible to discern a major concern of governmental practices as involving the “making up” of individuals, through intervention, co-option, inclusion and so forth. This ‘making up,’ the constructive nature of power, impacts upon the subjectivity of individuals such that self-formation, the development of identity, subject positioning and so forth are all effects of power. This level of analysis Foucault locates within the dimension of “ethics”.

Ethics: The Subject and Power

In the modern world, Foucault argues that self-formation is concerned with “the kind of being to which we aspire” (1984: 355). This pertains to a process of self-liberation, of our repressed feelings, thoughts and beliefs – liberating the ‘true’ self in order to achieve self-fulfilment and liberating our own rationality from the irrationality that constrains it (1984: 349). Unburdening the self of its intra-psychic tensions provides a release and enables the process of developing the self. For Foucault, however, subjects are created through the exercise of political technologies and are contingent, therefore, upon the operations of power for their conditions of possibility (Foucault 1982: 212). These operations of power create a subject “subject to someone else by control and dependence, and tied to his own identity by a conscience or self-knowledge” (Foucault 1982: 212).

The operations of particular configurations of power and knowledge, then, provide a framework for “ethical work” by the individual on him/herself and which provides “the means by which we can transform ourselves” (1984: 354-5). The result of such work is an ethical relationship with oneself: “which determines how the individual is supposed to constitute himself as a moral subject of his own actions” (1984: 352). The practices involved in this ethical work constitute “technologies of the self” by which individuals “effect by their own means or with the help of others a certain number of operations on their own bodies and souls, thoughts, conduct, and way of being, so as to transform themselves in order to attain a state of happiness, purity, wisdom, perfection or immortality” (1988: 18). Through such practices and technologies, individuals are subject to a certain “mode of subjection,” that is to say, “the way in which people are invited or incited to recognize their moral obligations” to follow a certain pattern of thought, behaviour or comportment (1984: 353). Such governance may, for example, occur through therapy or counselling, focusing, for example on building “self-esteem” (Cruikshank 1993).

The criteria which shape the recognition of this moral obligation derive from various sources such as scientific or legal discourses (1984: 257). Clearly in the context of the present study, this ethical level will be of interest since it represents the level at which probation intervention has traditionally operated, appealing to the soul or conscience and, in its more psychological forms, working upon the psyche to effect change.

Governmentality And The Nature Of Power In Modern Society

Foucault’s earlier work on disciplinary power and its permeation of a variety of the institutional structures of modern society (Foucault 1977) has been highly influential within social theoretical analyses of modernity, particularly in relation to crime, punishment and social control (Garland 1997; Garland 1990; Clegg 1989; Cohen 1985). However, there is a danger in taking the disciplinary argument too far: an emphasis upon structures of surveillance, control and correction tends to produce an account of modernity permeated by a monolithic apparatus of control, a ‘panoptical’ society which would be more akin to pre-modern conceptions of a ‘policed’, perfectly administered state rather than the current configuration of modern liberal society (Garland 1990). In a word, there is a danger of attributing too much coherence to the forms of response in modern society to crime and deviance. Such a coherence would tend to obscure the differences, tensions and contradictions between different criminal justice institutions and agencies and would offer an essentialist account of a “disciplined society”.

Foucault offers in his later work, a perspective from which a more subtle and nuanced account of the role of probation within modern society can be developed. Foucault depicts the development of a particular approach to governing modern society which he refers to as *Governmentality* (Foucault 1991). Foucault intends this neologism as indicative of a certain *mentality* of government, a mode of thought through which the state comes to conceptualise the

exercise of power over the populations of modern societies as being carried out but in the interests of the state or sovereign but rather in the interests and welfare of the population itself.

In referring to 'government', Foucault indicates the manner by which the conduct of social, economic and individual life may be said to be governed through a focus upon aligning various aspects of the life of individuals with certain norms, plans or schema that bring the conduct of the individual in line with the achievement of wider political ends⁵ (Foucault 1991; Dean 1999; Rose and Miller 1992; Miller and Rose 1988). Such activities of government are concerned, at a specific and particular level with the "conduct of conduct", a "form of activity aiming to shape, guide or affect the conduct of some person or persons"(Gordon 1991:2). Foucault argued that governmentality as a concept covered "the whole range of practices that constitute, define, organize, and instrumentalize the strategies that individuals in their freedom can use in dealing with one another" (Foucault 1997: 300).

'Governmentality' as series of techniques and practices of the governance of the state and the individual has emerged as a mode of exercising political power in complex modern society where the limits of sovereign power become apparent as inadequate to the tasks of government. Rather than ruling by force and coercion, government is effected through a plethora of strategies and programmes aimed at particular facets of life. This notion of the government of individuals draws attention to the limits of coercion as a form of government and stresses the role of consent and co-operation in the government of modern society : people need to be involved in their own government, to recognise that they act in a certain way because it is in their best interests. Where the state rules by decree alone, it will always dissipate some of its power trying to secure compliance. The governmental state, in contrast, is more efficient since its populations take part in , and are broadly in accord with, the aims and activities of government. Not only are the citizens of democratic societies the objects and targets of government, but they also take part in their own governance (Burchell 1993: 270; Rose 1990).

Thus governmentality refers to an art or practice of government in which the state is increasingly concerned with the government of populations as an end in itself rather than as a means of extending or consolidating the sovereign power either of the state or its ruler. It is important, then, to stress that *government* is understood not as a reference merely to the activities of the state executive but rather to a "dimension of historical experience" which covers a plethora of institutions, agencies and practices within the modern state, including "police, liberalism, security, social economy, insurance, *solidarisme*, welfare, risk management.." (Burchell et al 1991: ix).

Over the last decade or so, the concept of governmentality has provided fertile ground for the emergence of a series of studies from a variety of disciplines and fields of interest. These include studies of education (Hunter 1988), accounting (Hopwood and Miller 1994), unemployment (Dean 1995), poverty (Dean 1991), child abuse (Bell 1993), alcoholism

(Valverde 1998), medicine (Greco 1993; Osborne 1993), psychology (Rose 1996), social work (Parton 1994), self-empowerment (Cruikshank 1993) as well as several general works on governmentality and the politics of modern society (e.g. Rose 1999; Dean 1999; Rose 1996; Barry et al 1996; Burchell et al, 1991). The potential of the use of governmentality in the field of crime and criminal justice has been explored by Garland (1997) whilst more specific analyses of crime prevention (O'Malley 1992), community policing (Stenson 1993) and systems of actuarial risk prediction (Feeley and Simon 1992; 1994) have extended the approach into criminology. These disparate groupings of interest, whilst differing in their approaches to their subject, share a central theme, that of how various institutions and practices within modern society serve as 'political technologies' which seek to engage individuals with the agents of such institutions to guide and shape the 'conduct of conduct' (Foucault 1982). Such studies do not offer a new theory of power, but rather a perspective from which emerges "a domain of questions to be asked and practices analysed" (Rose 1999: 22).

Thus governmental practices such as welfare, managerial practices, social security, child-care, medicine and psychiatry act as an *indirect* means of ordering the conduct of individuals. Understanding governmental practices and techniques in this way avoids positing a meta-coherent programme of social control that invests the activities of institutions in the modern state with a perfectly coherent and unified purpose and rationale. There is instead an emphasis upon the way that government is enacted through a multiplicity of diverse, overlapping activities that focus upon particular aspects of conduct: "local tactics of education, persuasion, inducement, management, enticement, motivation and encouragement" (Rose and Miller 1992:175).

Although requiring "the forging of alignments between the personal projects of citizens and the images of social order" these are not overt instantiations of repressive devices per se nor are their ambitions clearly delineated exemplars of the political aims and objectives of the state (Miller and Rose 1988:172). The effect, however, is of the personal also becoming the political, since individuals' subjectivity is inscribed by various vocabularies of authority which seek to "enlist them in particular strategies and to seek definite goals" (Dean 1995:563). Subjectivity becomes engaged with governance when "personal goals are aligned with those set out...according to some notion of the social good (Cruikshank 1993:331). Processes such as analysis and therapy which seek to enable the liberation of the self involve the individual in processes which are essentially governmental, requiring "slow, painstaking, and detailed work on our own subjective realities, guided by expert knowledge of the psyche" (Rose 1990:253). Through these processes, governance in modern democracies has largely involved techniques of *self*-governance, the inculcation of habits and self discipline through the development of an inner monologue which appeals to "the permanent heartland of subjectivity" (Rose 1999: 335).

This management or governance of individuals via the various conduits of social expertise forms an interrelated set of practices that produce a new domain of knowledge and practice existing between state and population: “the social” (Donzelot 1979). Social welfare and social security function as systems designed to preserve the well-being of the individual by the marshalling and deployment of tactics and strategies aimed at dissipating uncertainty and risk, enhancing health, encouraging child-rearing practices, and so forth. The creation of this series of alliances between experts and individuals inserts a pedagogical technology into the lives of the population whilst creating a series of intersecting sites of observation and surveillance.

In this space of the social, expertise works to inculcate various objectives and goals whose benefit, whilst tangible for the individual, are also beneficial for the population as a whole - habits of cleanliness and hygiene, the education of children, appropriate maternal comportment, orderly and stable behaviour and so on. The plethora of potential sites for such governmental intervention provides a means by which regulation can be admitted into the smallest and most intimate areas of life without provoking undue resistance.

Analyses of Government

Governmentality and the associated practices described above are not just abstract theoretical propositions. The terms and logics of the governmental approach have been give shape and form by various authors who have operationalised these terms to enable empirical research into various practices of government. As Dean (1999) notes, these practices of government need to be analysed in their specificity since they cannot be understood “as expressions of a particular principle, as reducible to a particular set of relations, or as referring to a single set of problems and functions”, instead, analytics of government involve a materialist approach in which regimes of practices form the centre point of an analysis which seeks to discover the logics of such practices (Dean 1999: 29).

Miller and Rose (1990;1992) provide an entry point for extending the Foucauldian concept of government to facilitate analyses of the governmental practices of modern society. They identify three Foucauldian mechanisms which form a useful framework for understanding the points of reference and analytic perspectives of an “analysis of government”. These mechanisms enable particular activities to be considered at the level of *political rationalities, programmes and governmental technologies* (Rose and Miller 1990; Miller and Rose 1992).

Political discourse, says Foucault, is ordered in such a way as to give its concepts, arguments and theories a rational nature, with a particular logic that provides a certain coherence between objects and action (Foucault 1981b:8). These *political rationalities* contain the possibilities, justifications and nature of government and which provide representations of reality in a manner that constructs both political problems and proposes their solution (Rose and Miller 1992: 178). These political rationalities are described by Gordon as enabling

a way or system of thinking about the nature of the practice of government (who can govern; what governing is; what or who is governed), capable of making some form of that activity thinkable and practicable both to its practitioners and to those upon whom it was practised (Gordon 1991: 3).

Government thus involves the intersection of *thought* with *practice*, providing a rationale for the way problems are brought into being and their solutions proposed. Political rationalities “have a distinctive moral form in that they embody conceptions of the nature and scope of legitimate authority...the ideas and principles that should guide the exercise of authority”(Rose 1999:26). The practices of government attain a particular legitimacy through the authority which the knowledges exercised by those practices confer: the changing scope and nature of knowledge may impact upon a particular governmental practice.

Government is enacted through the creation of series of programmes in which ideals of political discourse are translated into practical forms for the governance of problem areas. Government is thus a “problematizing activity” in that it identifies problems and posits their solutions within programmes of action(Miller and Rose 1992:181). Such *programmes* provide a discursive space within which that deemed politically problematic may be debated in various ways by intellectuals, politicians, economists, philanthropists, reformers and interest groups, enquiries and committees focusing upon the desirability of a particular outcome in a particular problematic field (Rose and Miller 1992:188). This involves bringing to bear the vocabularies and knowledges operating within a particular programme upon a particular topic of political interest and to render it thinkable within the boundaries of a particular representation (Rose and Miller,1992:181). These programmes “make the objects of government thinkable in such a way that their ills appear susceptible to diagnosis, prescription and cure by calculating and normalizing intervention” (Dean 1999: 183).

Governmental technologies provide the technical means by which political rationalities and programmes may be operationalised. By using the term *technology*, Foucault makes the point that government moves from ideas and concepts at the level of thought to specific levels of implementation within particular programmes at particular sites and location and through the actions of particular agents and groups. Thus governmental thought has to be *translated* into a technical register in order to give it a material shape and form in a particular location across the “complex of mundane programmes, calculations, techniques, apparatuses, documents and procedures through which authorities seek to embody and give effect to governmental ambitions” (Dean 1999: 175). This translation renders the implementation of government less systematic and coherent at the level of practice than at that of political discourse due to the need to configure governance through this multiplicity of sites, agencies and institutions in which knowledge provides the rationale for governance whilst governance provides a purpose for knowledge (Simons 1995:30).

It is through these technologies of power that the individual as *subject* comes to recognise him or herself as a social entity, a bearer of responsibilities and so forth and through which the maintenance of the individual's well-being comes to be a part of the process of aligning individual aspirations and desires with broader political concerns (Foucault 1988; 1982). Accordingly, government in its technical forms operates upon the conduct of those to be governed by at the level of *ethics* – the “relationship one has with oneself” (Foucault 1982). Government thus involves aligning the subject with particular political aims. But rather than through some “trick” of ideology, such an alignment can be effected by an appeal to the beneficial nature of the aims and objectives of government. Health, for example forms an area of government where behaviour is aligned with the normative aims of health professionals– norms of hygiene, nutrition and so forth- which have for the subject, a beneficial result. Herein lies the one of Foucault's most subtle arguments, then. Power is exercised over individuals not always in a coercive or repressive manner (although there are occasions when this will happen), but rather through the freedom of individuals (Foucault 1982).

Government, Practice and Political Thought

To summarise some of the implications of the above discussion: Government offers a means of studying the activities of particular sites of institutional power – such as the probation service- in terms of their specific activities, how these work at the level of interaction with others and the forms of knowledge that inform these interactions and give them coherence and logic at the level of practice. Government is an activity which renders certain aspects of life problematic and in need of intervention (Rose and Miller 1992). It acts through programmes, within which the objects of government are made thinkable and subject to diagnosis and intervention “by calculating and normalizing intervention” (Rose and Miler 1992: 183).

At a more general level, we may also seek to understand the practices and techniques of government against the backdrop of the wider political rationalities extant at a particular time. In the governmentality literature there are two major periodisations of political rationalities which encompass roughly, a period from the late nineteenth century through to the 1970s known as *welfarism* and a second period emerging from the 1970s onward of *neo-liberalism* (Rose 1999; Dean 1999; Rose 1996b). It is within the logics of these two broad rationalities of rule that we can compare and contrast the resonances and discords between certain patterns of political thought and their actual technical instantiation within the governmental programmes and technologies by which modern governments effect “government-at-a-distance”.

Welfarism

Governmentality research, in providing an “analytics of government”, maps out the discourses and practices that enable individuals to be governed through their freedom –

reflecting Foucault's depiction of power as operant upon individuals only to the extent to which they are free to behave according to personal volition and choice (Foucault 1982). A second major theme is that the emergence of these governmental practices is typically depicted against the backdrop of the 'welfarist' government of society and its transition toward new forms of "neo-liberal" governance in the last 25 years or so of the *twentieth* century. This "welfarist" governance is typified by the realignment of socio-political and economic practices within a political rationality whose political assumptions and ambitions pertain to the creation and maintenance of "mechanisms of security", apparatuses that will ensure the welfare of "each and all" as a right of citizenship within a nexus of reciprocal obligation and dependency between state and citizen. From the late nineteenth century, Britain⁶ saw the emergence of various welfarist mechanisms of security⁷ – old age pensions, national insurance and sickness benefit- each of which addressed the welfare of various social categories of individuals- the elderly, unemployed, the sick- in accordance with their potential for experiencing problems related to that categorisation (Burnett 1994; Gilbert 1966;1970; Harris 1972). Once established as an area of legitimate concern and a site for intervention, the terrain of the social opened up for colonisation by a new strata of social experts and administrators whose particular areas of expertise were mapped onto specific problematic domains in social life (Minson 1985: 9) Across a plethora of sites of expertise, governance was enacted through the activities of authoritative and expert programmes whose aims are those of securing a healthy, ordered society. Child guidance clinics, school health inspections, the visits of midwives, the inspections and interventions of a whole range of medical and psychological personnel, social workers and probation officers, all provide instances of the governmentality of the modern state as it apportions and allocates particular zones of the territory of the social to the authority of particular spheres of expertise. Within this political rationality of welfarism, then, runs a logic that links the state's role in the prevention and amelioration of social problems to a mutual nexus of rights and responsibilities: a logic of citizenship.

The post 1945 welfare state gave a new density and coherence to these mechanisms of security, incorporating them into the political structures of the industrial-welfare state. The economies of scale achieved by Fordist industrial practices were to provide the engine of the future, with economic growth sustaining the mechanisms of security of welfare:

mass production meant mass consumption, a new system of the reproduction of labour power, a new politics of labour control and management, a new aesthetics and psychology, in short a new kind of rationalized, modernist, and populist democratic society (Harvey 1989: 126).

Within this post-war welfare state emerged an explicit alignment of state, capital and labour through a series of processes aimed at balancing production, consumption and welfare. Wage contracts, collective bargaining and 'social contracts' emerged at the intersection of this

tri-partite arrangement. These 'corporatist' processes acted as "mechanisms of security", mechanisms which provided

modes of state intervention whose function is to assure the security of those natural phenomena, economic processes and the intrinsic processes of population: this is what becomes the objective of governmental rationality (Foucault, quoted in Gordon 1991:19).

Neo Liberal Society

In contrast to the political rationality of welfarist government, governmentality studies describe a shift occurring roughly during the last 25 years of the *twentieth* century toward a mode or modes of "neo-liberal" government (Rose 1999, 1996a,). The emergence of the 'New Right' as a political force following the 1979 election of Prime Minister Margaret Thatcher followed a decade of crises in which the project of the welfare state had seemingly lurched to a halt under the dead weight of its own inertia (Timmins 1995: 265).

Within this neo-liberal rationality there were various objections to welfare. On the one hand it stood for the 'nanny state', enfeebling and enervating individual initiative. It was expensive and bureaucratic, a drain upon the wealth of the nation through its contribution to the tax burden, obliging those who did not make use of its provisions to pay for those who did. And, importantly, the realm of expertise came to be seen as a nest of embedded professional self interest: in contrast to the importance placed upon professional expert authority within welfarist discourse, the new neo-liberal rationality perceived professionals as acting to secure their interests at the expense of the state and ultimately the tax payer - the 'consumer' of their services. A system in which there was no competition could not guarantee maximum quality and efficiency since the service user, as 'customer', could not vote with her feet by going to an alternative provider. As a result, professional domination and control over service allocation gives way to a "politics of need formation" articulating new demands for service in a register antithetical to that of welfarist government with its reliance upon autonomous professional expertise (Yeatman 1994: 106).

Neo-liberal governance is characterised by an emphasis upon autonomy and self sufficiency as the conditions for and desiderata of, freedom. Welfarism's concern with security is eschewed in favour of a focus on the individual and an emphasis on the need to remove constraints from that individual's freedom of choice, particularly in the field of consumption (Dean 1999; Rose 1999). In analysing the way in which the shift or mutation from welfarist to neo-liberal government impacts on the sphere of criminal justice, O'Malley (1999) has provided a useful elaboration of this understanding of late *twentieth* and early twenty first century government. O'Malley argues that such government is more fruitfully considered in terms of the convergence of neo-liberal and neo-conservative political discourse found in the politics of the 'New Right'. He highlights the twin emphases of new right politics, namely on the one hand, a

neo-conservative stress on authoritarianism and sovereignty and on the other, a neo-liberal stress on individual autonomy and the dilution of barriers to the pursuit and achievement of such autonomy. These two discourses, he argues, juxtapose contradictory concepts and logics into the governmental approaches of the new right, thus accounting, for example, for the “contradictory and volatile” nature of contemporary penal strategies and practices (O’Malley 1999).

The following chapters, then, will consider the role of probation as a particular instance of government. Emergent as part of the plethora of welfarist projects during the late nineteenth century, probation will be depicted in terms of its practices through which offenders were to be assisted, counselled and cajoled into the normal behaviour of citizens. Probation, as a mode of punishment, offers an interesting example of governance since it explicitly addresses the welfare of the offender in order to enlist him or her in the project of reformation and rehabilitation.

In the next chapter I sketch out a conventional chronology of the development of the probation service from mission to millennium, as it were, in order to provide a broad framework upon which to superimpose my subsequent discussion of probation’s governmental practices and techniques. The extent of change which the probation service has undergone within late *twentieth* century neo-liberal society will then be examined through an empirical study of probation discourse in terms of its governmental ambitions, capacities and techniques.

2 Probation and Government

Much philanthropic activity in the late nineteenth century engaged in new initiatives to alleviate the effect of perceived excessive drinking amongst the poor (Shiman 1988). Such habits impeded the efficiency and effectiveness of the individual worker, as well as debilitating the ability to provide for oneself and family and conducing toward disorderly conduct and moral decline.

During the late nineteenth century, the large amount of alcohol-related crime coming before magistrates in the Police Courts⁸ had become the subject of attention of various missionary groups, who sent their agents, the 'Police Court Missionaries' into the courts to provide material help and spiritual assistance to those in trouble, with a particular emphasis upon the collection of 'pledges' of abstention from the intemperate (McWilliams 1983; Bochel 1976; King 1958; Le Mesurier 1935; Ayscough 1923)⁹.

The largest group of Police Court Missionaries was provided by the Church of England Temperance Society (Leeson 1914). The C.E.T.S. had turned to this missionary work in 1876, when one of its concerned members, a Mr. Rainer, had made a an initial contribution toward providing a means of reclaiming the habitual inebriate offender (Shiman 1988:100; Le Mesurier 1935)¹⁰. The seriousness with which working class inebriacy was regarded is evidenced by the remark of a missionary in 1886: "The wickedness of people while intoxicated I cannot describe" (Batchelor 1886 quoted in Page 1992: 15). It was however, precisely the task of describing that wickedness which was assigned to the missionaries and later probation officers, establishing "a bridge between the administration of assistance and the juridical apparatus" (Donzelot 1980: 124).

Although the Church of England Temperance Movement focused upon the behaviour of the working classes, resting on the premise that "conversion could rescue all but the most degraded", it was also a radical movement, pressuring for social reform and change right across the social landscape (Young and Ashton 1956: 28). Thus the task of temperance reformers was one of "preparing the ground for the educationalist" and therefore ultimately enabling the development of the working classes politically (Harrison 1971:351; 366). Well connected politically, the CETS had a wide range of activities that radiated from its central purpose of temperance (Shiman 1988: 107):¹¹

Some of the concerns of the CETS were directly connected with the alleviation of intemperance, but others were only distantly related, often aimed at fulfilling a social need that had no other remedy. Thrift banks, sick and benefit societies, musical bands, funeral guilds, athletic clubs and mutual improvement societies were only some of the activities off this temperance society...In many areas the CETS was the only church agency in touch with the poorer classes. Contact was also made through the variety of missions sponsored through the society...[which]..encouraged a personal involvement by the more privileged members of society in the problems of the less fortunate (Shiman 1988: 104).

The missionaries did not only visit the courts in search of those who might be reclaimed: cab ranks, factories, meetings, railway stations and fire brigades all offered similar sites with a population of sufficient souls at risk to make a visit worthwhile¹² (Ayscough 1923: 16). However, by 1884, it was the link between crime, drink and disorder which elicited so much of the missionaries' attention :“the work at the Police Courts had grown so much that...it had become the principal duty of the Missionaries...[so that] visits to fire stations had almost ceased” (Ayscough 1923: 24).

Women missionaries began to be appointed after 1884, principally to deal with female offenders¹³. In Wakefield and Liverpool, missions were set up to work with discharged prisoners. The ‘Prison Gate Mission’ in Liverpool provided newly released prisoners with a free breakfast, over which the missionary was able to ‘rescue’ many women and girls whilst male prisoners would be helped in finding employment or, alternatively, given help in emigrating whilst short-term accommodation began to be provided for young offenders in London, providing “training, good food, mild discipline and regular hours..” (Le Mesurier, 1935: 192).

Despite a lack of facilities and official recognition, the missionaries became increasingly of use to magistrates who would use them to make enquiries of those coming before the courts and who were felt suitable for more lenient or understanding treatment¹⁴. The missionary operated upon a “general commission of philanthropy and social enterprise” (Gamon 1907: 162), bringing material help to offenders with the longer term aim of saving souls. The vehicle for change was the probation officer's personality and it was upon the relationship between offender and officer that the success of the enterprise was founded: “the essence of probation is the constructive friendship” (1914: 114). Leeson emphasised the importance of the officer's personal qualities, adding that “[o]n his or her individuality the success or failure of the system depends” (1914: 86). This would certainly be a dominant assumption for most of the century.

In the incorporation of these agents of a religious society into the practices of the courtroom, one sees two important moments in shaping the emergent model of probation. Firstly, the admittance of the opinion of a disinterested party into the sentencing procedure marks a departure from the strict ‘classical’ legal system and admits evidence which, although not necessarily mitigating, is allowed as providing insight and context, enabling an *understanding* of the offender's behaviour and therefore a greater insight into both cause and suitable treatment.

Secondly, the distinction between those whose offending could be dealt with less harshly and those for whom only severe punishment could be countenanced, mirrored the distinction between ‘deserving’ and ‘undeserving’ poor, acting as a diagnostic aid for the sentencer. As one magistrate remarked to the veteran Missionary Thomas Holmes, the missionary was “a very useful person as a magistrate, as a judge, and as a friend to the poor, and he can apply in all cases of doubt” (quoted in Holmes 1902: 79). Within the legal process of

sentencing, the probation officer began to occupy a role of synoptic expertise, a mediator able to offer up a suitably condensed moral biography through which decisions of culpability and the exercise of magisterial discretion and leniency could be given an empirical density¹⁵.

The State and the Soul

The 1907 Probation of Offenders Act marked the State's official acceptance of a parallel role to that of administering punishment to its deviant citizens, a role involving the removal or diminution of the causes of that deviancy via means other than the strict austerity of the prison. Rehabilitation was becoming a major aim of the criminal justice system, articulated some years previously in the Gladstone Report (1895). With the development of new mechanisms of providing security from social ills - health and employment insurance, pensions, school meals - a place had opened up within this growing apparatus of security for the treatment of that area of social ill associated with the criminal and the delinquent.

From the early 1880s, there had been pressure from reformers for the adoption of a probation system modelled upon the system operating in the United States and various private members bills had addressed the issue of probation. In England there had been various early instances of offenders being placed on recognisance but such instances were usually geared up to deal with the first offender¹⁶. The Probation Of Offenders Bill 1881 had been ignored by many sentencers since it made no provision for the statutory supervision of offenders despite its name and offered little if any advantage over the existing disposals made under the 1879 Summary Jurisdiction Act (Bochel 1976).

By the early 1900s, there was an increasingly well articulated reformist programme which pressed for the introduction of a state-regulated probation system (King 1958). Organisations such as the Howard Association repeatedly drew attention to the successful probation scheme operating in Massachusetts and dispatched a Miss Hughes to inspect that scheme at first hand. She reported that the advantage of the probation officer was that each case could be considered in its singularity and individuality (rather than the homogenising conception of all being equal before the law). The probation officer, she continued, was not limited by the legal constraints of due process, but was rather able to move beyond the general prescriptions of the Law to the specifics of the case in that he

need not think of stern and equal justice and of strict impartiality. He was not an administrator of the law like a policeman, but he was primarily an educator. He could afford to be very human, very brotherly, *very individual in his treatment* (Hughes 1901 quoted in Bochel 1976: 17, emphasis added).

The advantages of such a system, however, were not universally accepted: The Chairman of the Prison Commissioners, Sir Evelyn Ruggles-Brise commented that he did not think the public would tolerate the 'inquisition' of pre-sentence enquiries by probation officers on the American model, particularly since the probation role involved "to a great extent police

duties” (Ruggles-Brise 1899: 23)¹⁷. Nonetheless, the acceptance of the utility of probation both inside government and by reformist bodies was finally given official backing in 1906, as the newly elected Liberal government began planning for the introduction of a probation system (Bochel 1976).

The 1907 Probation of Offenders Act was passed on twenty first August 1907 (Home Office 1910a) and the system commenced on January 1st 1908 with the Bill passing practically unopposed (Bochel 1976: 45). As a result of the 1907 Act, the existing activities of voluntary societies were to be incorporated into this new system, although the use of individuals acting from religious motivation was questioned by some as lacking the necessary impartiality (Gamon 1907). However, a compromise seemed eminently suitable for this project, with two contemporary commentators arguing that “Private devotion in this direction may do much, but for the best results the power of the State must join hands with philanthropic effort” (Russell and Rigby 1906: 132). The major source of the probation officers would be the Church of England Temperance Society’s Police Court Missionaries, who provided almost all the probation officers appointed in London as a result of the 1907 Act (Bochel 1976: 41)¹⁸.

The potential for checking the high use by the courts of custodial sanctions was apparent from the start: the Earl of Meath, in the Lords debate had remarked that the Act was likely to “empty the prisons” whilst Gladstone, the Home Secretary, also pointed out in a 1908 memo that the Probation Act provided a new alternative to imprisonment, thus establishing the potential of probation as a means of cost-saving in the penal system (Bochel 1976: 43).

The Probation of Offenders Act 1907, then, gave the work of the police court missionaries a defined legal status with the supervision of offenders now becoming a legal requirement of probation, thus “strengthening the probation officers’ grip on the offender” (McWilliams, 1985: 258). By those working in the field, such new, legally enforceable powers had long been an aspiration to replace ad hoc practices such as standing bail for offenders (Holmes 1900a:174).

The 1907 Act set out the duties of the probation officer. The officer was to focus upon “the conduct and mode of life of the offender”, with an emphasis upon making visits to the offender’s home rather than receiving office visits (Home Office 1910a;1910b). The probation officer’s duties encompassed a role of surveillance, pastoral care and friendship, with a particular concern for the direction of the offender into the pathways of a normative lifestyle. There was a recognition that contact with the offender should not be prolonged, with the officer enabling the offender to avail herself of the services of other agencies outside of the criminal justice system: “[o]ne of the principal things the probation officer must do is to make use of the existing social agencies” (Leeson 1914: 124). Acting as a relay between these agencies, the probation officer helped the offender find work for the unemployed, introduced young men to Lad’s Clubs, helped

improve domestic circumstances which provided the “breeding ground of child offenders” and even encouraged the thriftless to open savings accounts (Home Office 1910a: para 4).

Probation was not alone in its focus upon the delinquent and the deviant. Indeed, an increasing variety of agencies were strung out across the continuum of deviancy that led from minor transgression to prison. From truancy to burglary was but a matter of degree, and the contributing factors that established one’s place on this continuum were clearly mapped out: poor parenting, delinquent peers and siblings, environment, bad health, degeneration, disability, epilepsy-all provided a surface of intervention into the lives of offenders - particularly young offenders. A network of agencies was gradually put into place to regulate the lives of the deviant, especially those of youths and adolescents. For these delinquents, the police courts formed a point of intersection between the Law and the various agencies of expertise:

the school attendance officers, who represent the educational authority in court, when education summonses are being heard, to report the number of attendances the child has made in school and the results of their visits to its parents..[also]...industrial schools officers...[and].NSPCC (Gamon 1907: 160-1).

But, whilst this myriad of authorities attending court to report upon the conduct, home circumstances and other contributing factors were on the side of the prosecutor, the probation officer acted in court as “the friend of all alike, and the friend simply; never the prosecutor” (Gamon 1907: 161). The use of friendship as a vehicle for working with offenders marked out a line of continuity between older, philanthropic institutions and the new probation hybrid of state and voluntary activity. There was thus established from the start a kind of official distancing of the probation officer from the other authorities involved in the legal machinery, with the probation officer deployed not to establish or qualify the terms of guilt so much as to calculate the legitimacy of the claim to leniency of the accused through the presentation of a biographical synopsis of the causes, contexts and correlates of the individual’s offending behaviour.

A Departmental Committee was set up during 1908 to survey the result of the new probation ‘experiment’ (Home Office 1910a). Despite the debate over the suitability of denominational societies for probation work, the committee recommended the continuance of the system whereby these societies were reimbursed for the activities of their agents. Indeed, by the outbreak of war in 1914, the Home Office was considering the creation of a national probation network predicated upon a subsidy system for philanthropic societies (Bochel 1976). By the end of the War, however, the state had expanded its governmental powers considerably and it was as a part of an official mechanism of court-based social work that probation would develop in the years to come.

Bureaucracy, Centralisation and Professionalisation

By the end of the First World War, temperance had ceased to be a political issue with many of those attracted to the movement now involved in other programmes of reform within the

Labour and other socialist causes (Shiman 1988: 248; Harrison 1971: 386). The inter-war period saw probation developing along both institutional and professional lines. The Home Office began to address the ad hoc nature of probation and of the use of agents of denominational societies for what was increasingly regarded as a secular activity. The formation of a professional association, NAPO, in 1912 saw the first conscious moves toward professionalisation, with probation officers beginning to see themselves as specialists in the field of working with criminals rather than as agents of a particular religious society (Le Mesurier 1935). As Russell and Rigby had noted in 1906, on the eve of the experiment, "Those who understand the task will work all the better if they feel they are part of a definite and well-organised system" (Russell and Rigby 1906: 32). Such a formal system was now evolving.

The process of social reconstruction after the First World war saw the growth of professional social work as previously philanthropic activities became sedimented within the growing apparatus of social government. The social studies courses at various universities were co-ordinated by the Joint University Council for Social Studies and these courses not only contributed toward the professionalisation of social work, but also shaped an understanding of what social work actually was. Yellowly (1980) lists four characteristic features of these social studies courses:

first, a broad interest in social and political philosophy and thus in such concepts as rights, equality and freedom; second, a 'scientific' approach to the study and alleviation of social problems, via economics and sociology; third, a conception of social work as inseparable from the practical administration of the state institutions developed to promote social welfare in its broadest sense; and fourth, a total rejection of the moral and evangelistic outlook characteristic of so much Victorian social work (Yellowly 1980: 44).

Citizenship was a powerful organising motif within the rationality by which social work's role in society was understood: as Clement Attlee, then a lecturer at the London School of Economics' Social Science Department put it, "we are all united as members of the State" (Attlee 1920: 27). The motivation for involvement in social work was becoming grounded less in religious motivation and increasingly more in the notion of *social service*, a sense of social obligation rooted in a sense of common citizenship. Such social service

...is not confined to any one class...[i]t has arisen out of a deep discontent with society as at present constituted...it is the expression of a desire for social justice...the constructive side of the criticisms passed by the reformer and the revolutionary on the failure of our industrialised society to provide a fit environment where a good life should be possible for all (Attlee 1920: 2-3)

This embedded social critique at the heart of the evolving discourse of social work evidences the shifting angles at which such work was positioned in relation to the workings of modern industrial society. This position broadly involved the restructuring of elements of philanthropic work around new rationalities and programmes located at various sites within the complex of institutions and agencies charged with the administration of the 'Social'. Informed by an overall

critical discourse toward the management of the social realm, social work, during the 1920s and 1930s, became detached from its roots in Charity, and left behind much of its belief in vocation and religious inspiration as the basis for such work. Moving away from its philanthropic origins, Probation became an approach whereby the correction of deviance was carried out in the name of citizenship and social well-being rather than as an act of personal salvation and reclamation.

The 1922 Departmental Report into the Training, Appointment and Payment of Probation Officers instituted training schemes for probation officers, a move which was implemented by both the Home Office and the Church of England Temperance Society (Home Office 1922). In response to criticism of its use of missionaries, the C.E.T.S agreed to employ probation officers regardless of denomination and accepted that these officers would not be required to take part in temperance activities. Le Mesurier saw this, some thirteen years later, as marking modernist progress, since these secular undertakings on the part of the voluntary societies were

obviously more in harmony with modern feeling than the earlier practice and mark recognition of the fact that probation is a national work, not limited to any single church or school of thought (Le Mesurier 1935: 196).

The 1922 report also recommended pay rises for probation officers and suggested a government grant toward the cost of the probation service. Furthermore, it recommended the use of full rather than part time officers and suggested all courts be required to appoint a probation officer.

Although the 1922 Committee recognised that “the great value of probation as a means of reformation and prevention of crime” had ensured that the service had “taken a prominent and permanent place in our judicial system”, it was by no means in favour of further incorporation into the state apparatus, arguing that

[t]he probation officer has hitherto owed much of his success to the relationship he has been able to establish with the probationer, who looks on him as a friend and not an official. To turn probation officers into a new class of civil servant would, we believe, tend to destroy their valuable influence (Cited in King 1958: 13).

Clearly, at this point, the principles of Victorian philanthropy were still embedded within the official discourse of probation, with the Committee emphasising the need to maintain “those religious concerns which are generally admitted to be essential in probation work” (Cited in King 1958: 13). There was thus a certain tension between the establishment of probation as a secular arm of the courts and the older position of the probation officer *qua* missionary, acting within but *apart from*, the juridical function of the court.

The 1925 Act and its amendments the following year created the framework for a national service, predicated upon uniform standards of working conditions and qualifications - albeit organised on a diverse local basis. Local funds were now to pay for a large proportion of probation officers’ salaries and expenses (Le Mesurier 1935: 194). Probation areas, with their

own committees of magistrates were set up, charged with the recruitment, employment and administration of probation staff. Although an age limit of 25-40 was introduced for new probation officers, qualifications were still vague, including “strong character and a personality which is likely to influence for good the probationers placed under his supervision” (quoted in King 1958: 18).

The 1925/6 Acts introduced more standardised practices concerning preliminary enquiries, home and school visits, the regular supervision of offenders, the need for legal knowledge and the necessity of reporting back to the local probation committees and courts. Record keeping was also becoming more standardised¹⁹ (Home Office 1925: 19).

The probation service then, having commenced its official life as a hybrid technical solution to a region of the newly politicised social problematic and predicated initially upon a centralised co-ordination of a loose alliance of religious temperance charities, was undergoing a process of formalisation and bureaucratisation. Having started as a moral enterprise, the police court mission was moving, as Becker argues such enterprises will, from a crusade to a bureaucracy (Becker 1963). There was still, however, an air of compromise about the whole undertaking, an amalgam of religious endeavour and social and individual reform whose lines of delineation were not always clear or distinct.

The secularisation of probation moved slowly, and no doubt the pace of such change was conditioned by the fact that the voluntary societies contributed some £30-40,000 each year toward the service (Bochel 1976: 99). Indeed, the immediate problem of the 1920s was not the shift away from the religious foundations of probation so much as the ignorance and indifference of magistrates toward the system. Memos from the Home Office encouraged courts to employ and to use probation officers, and reiterated earlier advice that the probation order was not intended solely for first offenders and juveniles. King, writing from a position of modernist hindsight remarks that “[e]xperience was making the necessity of a strong central lead in the development of the service increasingly apparent” (1958: 20). Given the financial contributions of the missions and societies, a concern for expedience seems to indicate otherwise.

Secularisation

The probation service after the First World War was operating in an increasingly secular society: church attendances had been falling since at least the outbreak of the 1914-18 war and the political influence of the church was considerably weakened (Stevenson 1984: 359). Given the declining social role of the church, the calls for secularisation of the probation service were thus located within a wider social context in which the role of religion was becoming less important in the day-to-day lives of individuals. Although Canon Potter commented in 1927 that “[i]t is the distinct wish of the Government that the present arrangement should continue in order that the spiritual side of the work should be maintained”, that situation was changing and it was

the spiritual side of the work which was being relegated to a subordinate position within probation discourse (Potter 1927: 127).

The tasks undertaken by the probation service began to expand with an increased workload added to by matrimonial and after care work which now occupied a greater proportion of probation officers' time than previously, demonstrating the service's wide ranging social work brief beside that of its role in working with offenders. Successive waves of legislation added to the duties of probation officers: The 1926 Adoption Act resulted in some probation officers being appointed Guardians *ad litem*; The 1933 Children and Young Persons Act introduced supervision orders for those in need of care and protection, introducing a requirement that home circumstances visits should be made on all but the most trivial of young offenders appearing before the juvenile courts, whilst the 1935 Money Payments (Justice Procedures) Act required courts to consider probation supervision for young offenders who had failed to pay fines (King, 1958: 22).

The Departmental Committee report of 1936 marked a key defining moment for probation's role as specialist agency in the criminal justice system, delineating its professional role in terms which would distance it entirely from the strands of religious philanthropy which still clung to it. With a brief to enquire into "the social services connected with the administration of justice in courts of summary jurisdiction", the committee's enquiry ranged over probation supervision, the standard and training of probation officers, the role of probation officers in conciliation work in matrimonial disputes, social investigation undertaken on behalf of the courts and other sundry activities undertaken by probation officers (Home Office 1936: v). The report produced at the end of the two year enquiry noted the wide ranging nature of probation officers' duties and recommended that these be recognised as part of their official duties alongside the supervision of offenders. It would not be until the 1948 Criminal Justice Act, however, that these recommendations were, to a large extent, adopted.

Between 1907 and 1936, the probation service had enjoyed a period of expansion, in numbers of officers and in the number of courts making use of probation officers. The 1936 Committee noted that the system was now "suffering from growing pains" and that many courts were either ignorant or indifferent to the probation system (Home Office 1936: 90). Further, they recommended the ending of the system of "dual control" by which probation officers were employed either by their local probation committees or by a religious society or agency such as the Police Court Mission. The Committee argued that there could be no improvements to the service as long as the system of appointments and control were divided, remarking that

we have come to the conclusion that it is essential for the efficient development of the service that in future it should be organised on a wholly public basis (Home Office 1936: 104).

For the religious agencies, there was the possibility of involvement in training and in the provision of homes and hostels for probationers. Men and women with a Christian vocation for the work would be encouraged to apply to the new, wholly public service, thus preserving and strengthening the “religious spirit in probation” within the new, more secular, structure (Home Office 1936: 106).

The gradual erosion of a direct role for religion in probation work occurred in parallel with the growing process of professionalisation taking place within the service. The 1936 Committee emphasised the need for standardised training, having heard relevant evidence from hospital almoners, psychiatric social workers, the Care Committee organisers of the London County Council and representatives of Universities with Social Sciences Departments (Home Office 1936: 132). As Bochel comments:

An important feature of this report for the development of the service was its emphatic assertion that the possession of a sense of vocation and the right kind of personality was no longer sufficient to ensure the proper execution of the social work of the courts. The performance of the increased range of duties expected of the officer and the application of the appropriate techniques required the skill and knowledge of a properly trained social worker (Bochel, 1976: 143).

The role of the Probation Officer as Social Worker, however, was reinforced not by immediate criminal justice legislation but by an extension of its work with families. The Matrimonial Causes Act 1937 and the Summary Procedure (Domestic Proceedings) Act of the same year brought an expansion of the service’s role in conciliation, domestic proceedings and bastardy enquiries. The Matrimonial Causes Act gave legislative backing to practices which had been custom in courts for years (Seuffert 1937). As the Home Secretary Sir Samuel Hoare put it in his introduction to a new sixpenny booklet on the probation service, “Next to the supervision of offenders, the most important duty which a probation officer can be asked to do is that conciliation”(Hoare 1938:19). The use of probation officers in attempts to reconcile estranged couples evidences both the acceptance of probation as a form of social work and also highlights the way that family disharmony was seen as an important stage in the continuum of deviance that would in due course lead to offending and court appearances.

The 1938 Criminal Justice Act would have enacted many of the recommendations of the 1936 Departmental Committee held it not been held up, firstly by argument over the detail at committee stage and then by the declaration of a national emergency the following year with the result that the Bill was finally dropped in favour of more the pressing business brought about by the outbreak of war (NAPO Dec 1939: 117).

The probation service, then, between 1876 and 1939 had moved from being a service delivered by the agents of voluntary religious societies to a professional, wholly public service, albeit reliant on a curious hybrid discourse of Christianity, citizenship and the odd bit of psychology. Probation would, however, following the war, be placed on a much firmer footing.

Probation in the Welfare State 1945-1979

“The existing poor law shall cease to have effect”: with these words the task of social reconstruction set out in the National Assistance Act 1948 marked a final symbolic break with the legislation that had, since 1834, delineated the boundaries of the regulation of the poor (National Assistance Act 1948: ch29.(1)). Now, the new welfare state would incorporate and integrate various mechanisms of security designed to care for the citizen ‘from cradle to grave’ based upon principles of full employment, a national minimum income, free and equal access to health and education and an expanded role for the state and its agencies in administering these basic rights of citizenship (Timmins 1996; Glennerster 1994; Fraser 1973; De Schweinitz 1944).

The immediate post-war years saw a plethora of legislation developing the ideas and approaches of welfare that had developed and flourished during the war years. The Children Act 1948, The Criminal Justice Act 1948 and the National Assistance Act 1948 formed a complementary approach which incorporated measures of welfare and security into the social fabric as a matter of course rather than as a piecemeal response to social and economic crisis as had been the case following the First World War. Penal reform was but part of the wider restructuring of the welfare state, and this was increasingly reflected in the allocation of probation to its own place within the new welfarist apparatus.

The Criminal Justice Act of 1948 set in train many of the ideas that had been mooted in the Criminal Justice Bill of 1939 (Ede 1949:269; Radzinowicz and Turner 1950). Alongside the culmination of Beveridge’s work - the National Assistance Act - the CJA 1948 marked a clear departure from many of the overt and punitively symbolic practices of the penal system. Penal servitude, hard labour, corporal punishment and the three prison Divisions were abolished, whilst new restrictions were introduced on the imprisonment of young offenders (Home Office 1948; Nield 1948; Homfray Cooper 1949; Coddington 1950; Dawtry 1950; King 1958; Bochel 1976).

A plethora of new institutions for offenders were set out in the Act- remand homes, remand centres, probation homes and hostels, approved schools, borstal establishments, detention centres and attendance centres - all providing a particular and specialised focus upon specific aspects of delinquency. Yet these were more discursive manifestations of welfarist optimism than concrete sentencing options, since in 1951 the Lord Chief Justice noted that there were no remand centres, no detention centres and only three attendance centres without even a proper definition of what a detention centre was (Goddard 1951: 99).

A clearer role for the use of probation reports by the courts was set out in the Act. Such reports would provide information so as to make it possible for the court “having regard to the circumstances, including the nature of the offence and the character of the offender...instead of sentencing him,[to] make a probation order” (Home Office 1948: 3(1)). A minimum length of one year was also laid down for probation orders in order to provide a minimal standard for effective work (Coddington 1950).

The role of probation, as a specialist branch of social work was now inscribed within the legislation in terms of its role within the nascent welfare apparatus. The role of the probation service was to provide a nodal point of contact and assistance within the wider network of social services. As one academic commentator argued, whilst the probation officer possessed certain situationally specific skills, these were but necessary additions to a core role of service provision to which citizens were entitled :

far and away the most important side of their work is the part they share with all the other social workers - dealing with people in such a way as to help them to make the best use of the particular service (Cormack 1948: 187).

Indeed, the Probation Rules stipulated that the officer was to encourage all those under supervision or in statutory contact with the service to “use the appropriate statutory and voluntary agencies which might contribute to his welfare, and to take advantage of the social, recreational, and educational facilities which are suited to his age, ability, and temperament” (Probation Rules 1949: rule 58).

If the offender could not benefit from the opportunities of the welfare state unaided, then the probation officer would be there to ensure that he or she did so. As we shall see in the next chapter, however, there was a tension between the notion of the probation officer as a facilitator or broker of services in the community and the dominant assumptions of social casework which were firmly predicated upon individualistic psychologically based explanations of offending located within a more general social pathology (Yellowly 1980; King 1958; Morris 1950).

The post war years saw the scope of the probation service’s activities widen and its organisational base expand and consolidate. The implementation of the 1948 Criminal Justice Act saw the introduction of a wide range of statutory after care for released prisoners which had previously been the preserve of voluntary societies (Dawtry 1950). The Report of the Committee on Discharged Prisoners’ Aid Societies (1953) recommended that after care should be remodelled from the provision of material aid to released prisoners into a form more closely resembling that of social casework, a task for which the probation service was particularly suited (1953:18)²⁰. The Committee suggested that new prison welfare officers, modelled upon probation officers, should be established. A pilot scheme was set up in 1956 and resulted in Prison Welfare Officers being appointed in most prison establishments by 1961. As well as expanding the activities and influence of the probation service, the allocation of work with ex-prisoners tied the service more tightly into the criminal justice system and established a connection between more serious offenders and the probation service²¹.

Probation in a Changing Society

The post war years saw some challenge to the optimism of social reconstruction within a universal and utopian welfarist model: the 1959 White Paper *Penal Practice in a Changing Society* highlighted a major paradox of the post-war welfare state, namely that “rising standards of material wealth and prosperity have brought no decrease in the high rate of crime reached during the war: on the contrary crime has increased and is still increasing” (Home Office 1959).

One possible response to the needs of the criminal justice system to address this rising crime rate had been discussed by the report of the Advisory Council on the Treatment of Offenders the previous year. The report expressed positive opinions about the possibility of the use of compulsory after care for young prisoners (Home Office 1958: 9). The supervision entailed by such statutory after care would, the report argued, be suitable work for the probation service since they had a body of trained social workers and covered the country, so that, for the offender “if a crisis occurs in his rehabilitation, help and advice are readily available” (1958:12).

The probation service was also expanding organisationally, with an increase of probation officers on a full time basis and of senior and principal officers (Home Office 1962:62). The Home Office continued to push the combination of probation areas, reducing their number from 292 in 1947 to 104 by 1959 (Bochel 1976: 190). An expansion of the restriction placed on the powers of imprisonment available to the courts, inaugurated with the CJA 1948 also had implications for the workload of the probation service since courts were increasingly likely to call for a social enquiry report in cases where imprisonment was being considered (Bochel 1976: 192).

Streatfeild and Morison

The Report of the Inter-Departmental Committee on the Business of the Courts (Streatfeild Report) reported in 1961 on the arrangements for bringing offenders to trial and for providing the courts with “the information necessary to enable them to select the most appropriate treatment for offenders..” (Home Office/Lord Chancellor’s Dept 1961: para 1). In its consideration of the role of the probation officer in providing courts with information, the Committee formalised much of what had previously formed part of custom and practice within the sentencing process. As the “court’s informant on social matters”, the probation officer’s report was to give the court information that would help the court find the most suitable disposal (Home Office/Lord Chancellor’s Dept 1961: paras 333-337). Probation officers, the committee continued, should also be encouraged - as they were in many courts - to give an opinion as to the offender’s likely response to a particular disposal (Home Office/Lord Chancellor’s Dept 1961: paras 334-335).

The committee added the hope that, as the results of research into the causes of crime became better known, “it may be found possible to define more precisely those aspects of the

offender and his background which are relevant to the success or failure of particular forms of penal treatment” (Home Office/Lord Chancellor’s Dept 1961: para 336). Within the report, the Interdepartmental Committee displays a certain “optimism of modernity” in which, argues Garland, governmental discourse locates the answer to the problem of crime as lying in the application of an evolving positivism in which ever more research will enable a greater knowledge of the subject, thus facilitating more effective action (Garland 1996:446). Indeed, for probation, this report marks a high point in its epistemological influence since the report explicitly recognises the necessity for probation officers’ enquiries and invests them with a quasi-scientific nature which, it is keen to point out, was lacking in the days gone by ²².

The Morison Committee’s report was published in 1962 (Home Office 1962a) ²³ with a second report following six months later addressing the subject of approved probation hostels (Home Office 1962b). The report addressed all aspects of probation’s business - both that to which it was statutorily committed and to the work that it had taken on through custom and practice over the years. The findings were fairly anodyne, concluding in most cases that probation’s activities were ‘appropriate’ or ‘satisfactory’. The implications, however, were more far reaching, with the report remarking that it had “reasons for thinking that the demands on the service must increase...and that ways of expanding the service must be found” (Home Office 1962a: para 26).

Whilst uncontroversial, the report set out the domain of probation clearly as a social work approach that encompassed both the interest of society and the offender and, in doing so, carried on a tradition of gentle and benevolent reform:

Society must protect itself against the wrong-doer. It must show its disapproval of crime. But we take it as axiomatic that a society whose morality acknowledges the worth and dignity of each of its members must seek, in fulfilling these objects, the minimum interference with life and liberty that is consistent with them. This principle, implicit though it has been in more than a century of penal reform and supported as it is alike by the religious and humanist traditions of our society, seems to us, nevertheless, worth reaffirming in a world in which those traditions have been so widely and so tragically denied. We see probation as epitomising this principle because, whilst it seeks to protect society through the supervision to which the offender is required to submit, it both minimises the restriction placed upon him and offers him the help of society in *adjusting his conduct to its demands* (Home Office 1962a: para 13, emphasis added).

Within this argument is contained the basic premises of the welfarist rationality: society demands certain conduct as a right in the same way that it supplies the basics of security as a right. However, consistent with its liberal political tenets, the individual should only be subject to intervention in order to bring about normal behaviour to a minimal extent and via a means predicated upon help and assistance, rather than force. The government of the offender, then, was aimed at his or her readjustment to social mores and conventions through the enlistment of the individual into an ongoing commitment to such norms: to “co-operate rather than to obey” (Home Office 1962a: para 57).

The modernist theme of progress was reiterated, with the Committee depicting the present day state of the probation service from a teleological perspective, as the pinnacle of knowledge to date:

Today the probation officer must be seen essentially as a professional caseworker in a specialised field, skill which he holds in common with other social workers; skill which, if it opens to him hopes of constructive work which were not enjoyed by his predecessors...also makes more complex and subtle demands on him, reflecting, as it does, growing awareness of the difficulty of his task (Home Office, 1962a: para 54).

This approach, as the Committee understood it, was a valuable alternative to the negative effects of prison which “removes the offender from his family and community and suspends his social and economic obligations to them” thus enabling him to continue in his role in society as breadwinner (Home Office 1962a: para 14). The assumption here reflects the gendered assumption of the welfare state in general, predicated as it was upon a nuclear family provided for by a waged male worker (Riley 1992) and suggests a role for probation as a kind of social repair service, maintaining the virtuous cycle of prosperity through work that characterised Fordist-Keynesian organisation of welfarist society. The breadth of the probation task traversed a wide spectrum of deviance ranging from

..the unruly schoolboy whose primary need is for guidance and discipline and whose delinquency is superficial; at the other he may be an inadequate or aggressive personality who poses major therapeutic problems...a wide range of cases, some requiring intensive therapy, others help and advice, others needing primarily regular control (Home Office 1962a: para 16).

This daunting series of problems, failings and inadequacies still addressed the same welfarist objectives expressed by the Departmental Committee of 1936, namely “the ultimate re-establishment of the offender in the community” (Home Office 1936a: para 83). The ends remained the same but the means were now different. The 1962 Committee noted that probation work “has become more complex and more demanding since our predecessors carried out their inquiry”, finding it a significant indicator of progress that whereas the 1936 Committee could describe the functions of probation supervision without using the term ‘social casework’- it was now the norm to acknowledge the benefits of casework “a new and highly professional approach” which employed “the creation and utilisation, for the benefit of an individual who needs help with personal problems, of a relationship between himself and a trained social worker”(Home Office 1962a: paras 54-56).

This approach had evolved “from the gradually accumulated experience of social work teachers and practitioners in this and other fields they have learnt to apply and test a growing body of psychological and sociological theory: the modern caseworker’s faculty for understanding and influencing human behaviour owes much to the intuitions and perceptions of his predecessors” (Home Office 1962a: para 55).

Probation, then, from this official view, was now applying a scientific and professional approach in contradistinction to its earlier well-meaning but amateur techniques. For the Morison Committee it was primarily the new logics of casework that gave probation its utility in working with offenders in the welfare state, in particular, it was the *inclusion* and *involvement* of the offender that gave the work its impetus:

the appreciation of, and concentration upon, the probationer's ability to benefit from a developing relationship with the probation officer that principally distinguishes probation supervision from that of a quarter of a century ago. The emphasis has increasingly been placed on planning with the offender rather than for him (Home Office 1962a: para 59).

This individual work with offenders was, the report argued, greatly facilitated by the post-war welfare system which had removed many of the hardships of the past thus freeing the officer from "preoccupation with the material needs of offenders". The implications of the successes and triumphs of modern society over hardship and want meant that now

"The probation officer today needs all the warmth, charity, strength and forbearance of those who pioneered his service...he has also needed to add to these qualities, in increasing measure, the ability to master a considerable body of knowledge and, with its help, to *approach his work scientifically*" (Home Office 1962a: para 59, emphasis added).²⁴

The Morison Report, then, gave an encouraging nod to the activities of the probation service, giving the green light for its expansion and for the incorporation of work already being done through custom and practice. Involving a 'scientific' approach to working with offenders, probation was held up as an example of progress and development, its techniques representing the growth of knowledge over time and marking the state of the art. Whilst most of the recommendations of the Report were carried out between the report's publication and 1965, there was some acrimony over the failure of the government to implement the suggest pay rises for probation officers²⁵. In the course of one such debate, Leo Abse MP described the probation service's role within welfarist society as that of 'social engineers':

of all the engineers in the Kingdom who may claim they are making a major contribution to the nation's productivity, none, in my view, could claim to excel the contribution of the social engineers, of whom probation officers form the most important group (Parliamentary Debates 17th July 1962 col.190).

Within a discourse in which there was both political recognition and commitment toward the realm of the social, and the need to engineer it, the probation service existed comfortably as it had done since 1907. Indeed, it was about to experience rapid growth.

Net Widening: Probation and Prison

The expansion of the probation service was given further impetus by the report of the Advisory Council for on the Treatment of Offenders on the organisation of after-care (Home Office 1963). The report's overall approach developed from a position that "[a]fter-Care is

essentially a form of social casework” (Home Office 1963: ii). Accordingly, it made more sense to allocate after-care to the probation service rather than create a new, specialist agency. The losers here would be the local Discharged Prisoners’ Aid Societies²⁶, although the report noted that their staff would be free to apply for jobs within the ‘expanded and reorganised’ and newly titled ‘Probation and After-Care Service’ (Home Office 1963: paras 104-106). The arrangements for the transfer of the previously centralised arrangements for after-care were effected between 1965 and 1967, with the probation service taking responsibility for all after care (Home Office 1969: 42).

In this reorganisation, the expansion of the work of the probation service required the recruitment of individuals with new knowledge: probation committees were to include members with knowledge of work with discharged prisoners to reflect the expansion of after-care being undertaken by the service. This marked a shift in the traditional managerial link between the courts and their probation officers, entailing “some erosion of the principle that the magistracy alone should administer and supervise the work of the local probation officers” (Bochel 1976: 222). Also noteworthy was the location of the expansion of probation within an Fordist model of criminal justice since “the trend in penal policy today is towards greater integration of the various services concerned with the treatment of offenders” (Home Office 1963: para 102)²⁷.

The Morison Committee had recommended that the Home Office should publish a report on the work of the service in which “the extent of its own activity” should be made clear (Home Office 1962: para 180). The first such report was issued in 1966 (Home Office 1966) and was able to report that most of the recommendations of the Morison Committee had now been implemented (Home Office 1966: para 3). The report and that of its successor, published in 1969, showed the number officers in post doubling between 1956 and 1966 with an 18% increase between 1966 and 1969²⁸ (Home Office 1966; 1969). In both size and range of functions, the probation service was experiencing rapid growth, a growth concurrent with the dynamics of economies of scale to be found in contemporary economic arrangements.

Beside the absorption of after-care, the creation of a system of parole gave the probation service a further addition to its growing workload and brought the service into a closer relationship with the prison system (Home Office 1965). The White Paper, the *Adult Offender* (Home Office 1965) proposed that suitable long-term prisoners could be released on parole under the supervision of a probation officer and the Criminal Justice Act of 1967 put in place the mechanism for enabling such supervision.

Seebohm

The probation and aftercare service found itself and its role as a branch of social work somewhat challenged by the publication in 1968 of the Seebohm Report (Committee on Local Authority and Allied Personal Social Services 1968). Set up in 1965, the Committee’s brief had

been to “review the organisation and responsibilities of the local authority personal social services in England and Wales, and to consider what changes are desirable to secure an effective family service” ((Committee on Local Authority and Allied Personal Social Services 1968: para 1). The recommendations of the report set out a model of universalist service provision which would “reach far beyond the discovery and rescue of social casualties” in helping individuals, families and the communities in which they lived (Committee on Local Authority and Allied Personal Social Services 1968: para 2).

The Report recorded some concern about the role of probation in relation to the new unified service that it proposed, noting that “recent developments in aftercare and parole bring the probation and aftercare service increasingly into work in the community and thus raise the danger of unplanned overlapping” (1968: para 704). The report recommended that, within the ‘unified approach’ the local authority social services department should “accept the responsibility of concerning themselves with offenders and the families of offenders..” in co-operation with probation, the prison welfare service and voluntary organisations (para 141).

It was in the field of juvenile justice that the report impacted directly upon the probation service. In the last twelve years, the report noted, juvenile delinquency had become an increasing problem and the Government’s White Paper *Children in Trouble* was welcomed as a logical step in dealing with children and young people in trouble on predominantly social and educational rather solely legal, lines” (1968: para 258). If the probation service had earlier represented a modification or qualification of the severity of the law, by which the law became incorporated into the regulatory framework of welfarist programmes, as I have suggested earlier (see also Hewitt, 1983), then these recommendations marked a continuation of the same logics that had informed this modificatory and qualificatory role. Children and young people in trouble with the law were now little different from non-delinquent children, being differentiated only by the saliency of various problems in their lives. the resolution of those problems was no longer to be located within the realm of probation activity, since the Seebohm Committee were keen “to end the relatively sharp division between the possible service available to children involved with the courts and those who are not” (Committee on Local Authority and Allied Personal Social Services 1968: para 275). This would entail, the committee also suggested, the transfer of substantial numbers of probation officers to the new SSDs (Committee on Local Authority and Allied Personal Social Services 1968).

The expectations of the new unified Social Services Departments were large as were the resources allocated to them (Timmins 1996)²⁹. Probation officers lagged behind in their rates of pay as the new generic workers in local authorities reaped the benefit of the new Fordist structure with its high ratio of senior to main grade posts³⁰ (Expenditure Committee 1972).

The probation service had known for some time that the new proposals would affect its activities and might even lead to integration within the new unified departments. In 1968, the

Conference of Principal Probation Officers responded to the “current deliberations” on the future of social services which brought about the need for “special self-examination of the Probation and Aftercare Service at the present time” (Conference of Principal Probation Officers 1968: 4)³¹.

There was, the document argued, no real warrant for the incorporation of probation into a generic system since probation officers were officers of the courts, whose relationship with the courts was “based upon mutual trust and shared objectives” (1968: 4). Further, the objectivity and impartiality necessary for the administration of justice could only be delivered by resources allocated on a centralised basis and used according to “national standards of practice and training” (1968: 4). The incorporation of probation into a wider structure, the Principal Probation officers believed, would strain the allegiance of probation officers to the courts who were also, apparently, the guarantors of professional standards. In sum, the Principal Probation Officers marked out lines of difference and tension between the role of probation and that of other social work. This was despite the fact that much of probation’s history evidenced a alignment with social work as a profession and as an activity and in terms of its knowledge base. The Principal Probation Officers were keen to draw attention to the need for a “high degree of management and participation from central government” (Principal Probation Officers’ Conference 1968: 6). This wish would be granted, albeit at a slower pace than they might have envisaged.

The 1969 Children and young Persons Act relieved probation officers of some of their previous duties with young people. Saturated with the optimism of modernity, the Act sought to reinscribe the youngster in trouble and the troubled child within a new welfarist discourse articulated by social workers rather than agents of the court (Muncie 1999:258).

Probation was slowly moving away from social work. The vacuum created by the loss of juvenile work would soon be filled by new activities, represented within a programme of providing alternatives to custody: even in its absence, it seems that the prison acts as a determinant of the shape and parameters of punishment. As Foucault argues, reform acts in a subaltern role to the prison, in terms of setting its agendas and policies (Foucault 1979). Taking probation as an essentially reformist discourse, it is possible to see quite clearly that its role was increasingly circumscribed by the prison and, as the social work elements of probation work diminished, it began to assimilate some of the concepts and logics of the prison itself. By 1972, the Butterworth Inquiry into the Work and Pay of Probation Officers and Social Workers noted that the transfer of work with young offenders to the auspices of local authority social workers was removing some of the “promising and rewarding work” of probation officers whilst the probation officer

is being asked to accept responsibility for an increasing number of adult offenders who might otherwise be in prison....If the control it was sometimes formerly thought necessary to impose on some offenders by their incarceration is to be progressively replaced by the supervision of the probation officer, it is essential that the new system by which society is to

be protected should be made as secure and efficient as reasonable care and foresight is able to provide (Department of Employment 1972: para 45).

The welfare state had addressed major social problems believed to be inter-related determinants of crime such as poverty, poor housing and the lack of universal educational and employment opportunities. Within probation discourse, the influence of psychology held out an epistemological carrot which promised that soon there would be a solution to the problem of crime and delinquency. The head of the Home Office Probation Branch had put probation's role in context in just this way:

So far as probation is concerned, it does not seek to redeem the world...at the most probation exists to stop the leak and to hold up the bottom of society while the slower moving social services - Health, Housing, Education, Employment and all the Beveridges - work their will (Reynolds 1943: 55).

Whilst probation's ambitions were suitably modest within its allotted niche in the welfarist apparatus, those of the modern welfare state entertained a far more ambitious and long-reaching project. By the end of the 1960s, however, the scope, feasibility and breadth of this project were increasingly a subject of concern. Lengthening dole queues, industrial unrest and a challenge to the 'never had it so good' impact of welfarist politics, all cast doubt upon aspect of the welfarist project. By 1972, unemployment had reached one million, the highest level since the Second World War (Timmins 1996: 306). The bedrock of welfarism- the belief in the possibility of the management and regulation of economy and society, was now increasingly subject to structural and political pressure and challenge.

Community Service: Discipline in the Community

If probation had worried prior to the Seebohm Report about its possible incorporation into a community-based service, it was still keen to stress that it worked *within* those communities. The new developments of the 1970s would see it moving into applying *punishment* in the community. On the face of things, by the 1970s, political discourse seemed to have rejected imprisonment as a means of reformation and even as a means of deterrence (Young 1979: 41). The costs of prison compared with other penalties gave a further, administrative censure to high prison populations, providing a pragmatic support for other, reformist, discourses which held out the possibility of less socially damaging interventions at a fraction of the cost (House of Commons Expenditure Committee 1971).

Probation had always offered a measure of discipline in its requirements of the offender in terms of conduct, reporting and so forth, albeit wrapped within a generalised concern for the welfare and well-being of the offender. Now, however, probation was about to become involved with a far more overt disciplinary activity than hitherto.

The use of offenders to perform unpaid work in the community, said the Committee

should appeal to adherents of different varieties of penal philosophy. To some, it would simply be a more constructive and cheaper alternative to short sentences of imprisonment; by others it would be seen as introducing into the penal system a new dimension with an emphasis on reparation to the community; others again would regard it as a means of giving effect to the old adage that the punishment should fit the crime; while still others would stress the value of bringing others into close touch with those members of the community who are most in need of help and support (Advisory Council on the Penal System 1970: para33).

Due to its ambiguous nature, Community Service provided a framework to which a variety of penal discourses could adhere without apparent tension or contradiction (Oldfield 1994). It seems deeply ironic, however, that at a moment when work was in increasingly short supply-particularly for those individuals on whom Community Service would mainly be used-a new addition to the sentencing repertoire should rely upon the enforced rhythm of the work ethic to effect a symbolic recompense for harm done to society.

Political support for the new orders was strong, with the Home Secretary remarking that “not only should it work but that it should be type of order which the courts....will turn to as an alternative to short custodial sentences as a means of making offenders pay for their offences..” (Parliamentary Debates 8th Feb 1972: cols 481-2). Following a range of pilot projects, Community Service was introduced as a disposal by the 1972 Criminal Justice Act³².

In the pilot areas, staff had already identified those types of offender most likely to profit from Community Service which, although not providing a “casework setting” was, nevertheless, “constructive in its objective”. These included the purposeless, the isolated or withdrawn offender unlikely to engage in a casework setting and the offender whose attitudes toward society were “seen more as a community problem than a psychological problem” (Kent Probation and After-Care Service 1973: appendix 2).

Alternatives to Custody

The 1970s saw the development of ‘alternatives to custody’ as a key feature of penal practice. These alternatives were framed within a discourse surrounding the perceived ‘penal crisis’ represented by the growth of custodial sentencing and the consequent over-filling of the country’s prisons, representing for many commentators, a collapse in the ‘rehabilitative ideal’ that had underpinned criminal justice policy since the Gladstone Report (Bottoms and Preston 1980). In response to the growing sense of crisis, a variety of programmes emerged around a central theme of the provision of alternatives to custody – community based sentences that would enable sentencers to divert a serious offender to a suitable programme without having to resort to the use of custody (Vass 1990; Pointing 1986; Stanley and Baginsky 1984).

As well as Community Service, the 1972 Criminal Justice Act also introduced a new power of the court to make a probation order with an additional requirement of attendance at a day training centre for a period of “not more than sixty days” (Criminal Justice Act 1972: section 20). According to the Home Secretary, these new centres were suitable for

the inadequate, the type who repeatedly runs into trouble because he cannot cope adequately with the demands of modern life (Carr quoted in Adams 1976: 48)

Despite such a continuing focus on social integration and adjustment, to be 'tough enough' to qualify as an alternative to prison often suggested an approach radically at odds with accepted notions of probation practice within the service itself. Debate ensued as to whether the functions of 'care and control' could remain an integrated part of probation practice or should be separated. Offenders now might occupy certain positions within probation discourse - as 'clients' whose needs were to be met through social work or as criminals to be controlled and punished (Bottoms and McWilliams 1979; Parsloe 1979; Harris 1977).

A key question was whether control could be effectively exercised outside of a custodial setting in order to avoid further attenuating the weakened bond between offender and society. Within welfarist discourse, from the inception of probation, the damaging effect of prison formed the *a priori* of its alternative strategy of pastoral supervision in the community and such an emphasis continued to find expression within official discourse. As the Advisory Council on the Penal System put it in 1974, "problems which have led a person into crime cannot easily be dealt with in a custodial establishment, isolated from the offender's social circumstances" (Advisory Council on the Penal System 1974: para 178). Accordingly, the report proposed new 'custody and control' orders and 'supervision and control' orders which would be administered by the probation service (Advisory Council on the Penal System 1974)³³.

The achievement of a reduction in the use of prison could, for some commentators, be achieved through the probation service taking a more radical stance in its approach to the sentencing process. Indeed, for some, this was almost a matter of historical inevitability: "the probation service as an institution has developed in order to establish alternatives to custody" (Pointing 1986: 16). Understood in such a teleological manner, the service's priority, then, was to revamp its court reports in order to "meet head-on the intransigence of sentencers" with the effect that "the language of social inquiry reports would shift from the pseudo-scientific language of diagnosis [Bean 1976] to a much higher level of penal policy debate" (Willis 1986: 36).

The welfarist critique of prison and its support for enhanced and expanded community based penalties hinged on the moral argument that prison was so damaging to the offender that it should be avoided wherever possible. This argument, however, was not based on empirical evidence that probation could reduce the recidivism of those it dealt with. Far from it. The much vaunted IMPACT experiments had significantly failed to show positive results in the use of intensive work with offenders (Folkard *et al*, 1966; 1974; 1976)³⁴ whilst Stephen Brody, in a review of the effectiveness of the efficacy of various court-based disposals in reducing recidivism, echoed findings from the United States in concluding that there was little to choose

between any type of disposal (Brody 1976; Lipton, Martinson and Wilkes 1974, Martinson 1975).

By the late 1970s, the Home Office noted the growing consensus for research findings into the impact of sentencing on recidivism to demonstrate “there is nothing to choose between different lengths of custodial sentence, different types of institutional regime, and even between custodial and non-custodial treatment” (Home Office 1977). Even so, the Home Office’s response was not to suggest more punitive sentences but rather to offer a typically modern suggestion:

in view of the limitation in the capacity of the agencies of the criminal justice system to reduce the incidence of crime, the scope for reducing crime through policy that goes beyond the boundaries of the criminal justice system merits particular attention (Home Office 1977: para 15).

However, widespread social amelioration of the causes and correlates of crime was a welfarist concept rooted in the precepts of modern society. For some seventy odd years the welfarist system had been evolving, and had increased exponentially following the Second World War. It was now a commonplace that material need had been dealt with by the structures of welfare and accordingly “it was not unreasonable to expect a reduction in the crime rate” (Young 1978: 48-9). Yet crime rose inexorably after the end of the second world war and by a greater margin that was expected even when the adverse effects of the war upon children’s emotional development were taken into account (Ministry of Education 1955). Welfarism had rested upon a belief in social change and improvement as a means of doing away with social ills. This required an optimistic series of programmes and a considerable financial outlay to maintain them. The shifting political landscape of government from the late 1970s, however, would provide little space for such ideas as social work and probation became increasingly incompatible within the emergent neo-liberal political rationality.

And End to Optimism? The Crisis of Penal Modernity

There is discernible during from 1970s, then a growing sense that the rising crime rates of the post war period were not amenable to a welfare driven approach, that perhaps crime was not an instance of social pathology open to ameliorative intervention. In 1964, the Government could speak of “the war against crime” as requiring a “joint effort by all social agencies” to improve the “moral health of the nation” (Home Office 1964:5). Calling for more research, the paper echoed the Streatfeild Report in advocating the supply of reliable, research based information to sentencers to inform appropriate sentencing practice. Yet even in this statement of modernist optimism there were caveats which signalled seeds of doubt within the optimism and positivism of the time. The falling success rate of youths released from approved schools, the paper argued, might be due to the schools now having to deal with young offenders “who are less responsive to training than they used to be” (Home Office 1964: 13). The government of the

individual through methods of welfarism was increasingly open to doubt. As we have seen in the preceding section, the available research evidence tended to reinforce such doubt. This diminishing faith in the power of welfarist expertise to impact on crime represents, argues Garland, a 'crisis of penal modernity' (Garland 2001; Garland 1995), a disjunction between the old utopian confidence in the possibility of a social order continually improved by expertise and the newer, less ambitious pragmatism of neo-liberal thought.

1979 saw the election of a Conservative Government on a 'New Right' platform of Law and Order, fiscal prudence and an overall vision of 'rolling back the state' (Brake and Hale 1994). If there was a growing lack of faith in the possibility of rehabilitation during the 1970s, the election of the Conservatives in the 1979 General Election reinforced this crisis of confidence. From now on, welfarist solutions to crime would be challenged not just by empirical evidence, but by the neo-liberal programmes of government which followed.

Within this new political rationality of neo-liberalism, crime was represented in ways divergent from the concepts of the welfarist discourse that had been developing since the turn of the century. 'Law and Order' had become a new discursive figure in political contestation, with the Conservative Party committed to "restoring the rule of law" which, they alleged, had been undermined by their political opponents. The means to restoring the rule of law included a revision of police powers, providing the courts with tougher, flexible sentencing powers and an increase in the prison building programme (Downes and Morgan 1997: 93-4).

Emerging from a welfarist rationality in which the programmes of social work and reform were constituents of a larger project of social regulation and governance, probation had, since its emergence in the late nineteenth century, been resonant with the tenets and ambitions of welfarist discourse. The principles of probation - basically those of assisting the inadequate offender to gain or regain a place within modern society- had been a part of the rationalities and logics of welfarist government throughout the *twentieth* century. Quite simply, probation had not, since its inception, been seriously questioned in terms of why or how it provided a suitable means of dealing with offenders. Well-connected - both politically and professionally- and well supported, probation had formed an integral part of the optimistic programme of modernist welfarism. It had been seen by government as social work - literally, work in the realm of the 'social' carved out by the growth of expertise around the multi-faceted site of working class life and the service had embraced its claim to professionalism as a social work agency, with the acceptance by NAPO in 1968 of a generic training programme.

By the late 1970s, training courses were producing new recruits who held to different view points from the old benign paternalism of earlier years-even a Marxist revolutionary could apparently without too much contradiction, become a probation officer (Walker and Beaumont 1981; Parsloe 1979). Yet this new evangelism, embodying a radical politics that problematised and questioned the legitimacy of the state and the its laws the very structure from which

probation derived its authority, purpose and being, was actually completely in keeping with the reformist currents which had always surged through probation discourse, even though their political ambitions and objectives were distinctly different. If the new wave of probation officers were critical not only of their own organisation but the system in general, they were only doing what their predecessors (albeit in a more limited and constrained way) had been doing for over a century.

As probation struggled to accommodate its radical strands together with its new punitive roles and functions together with its older, benign sense of mission, probation found itself no longer in the position of problematiser, the definer of problems: now it was probation itself which was problematised, by a new programme of government from which the old tenets of welfarism were absent. Within this new discourse, probation now would have to justify itself, to answer questions as to its role and purpose which had been almost unthinkable within the rationalities of welfarist governance.

Punishment in the Community

The 1980s saw the steady growth of centralised control over the probation service. The pace of change was – compared with the impact of the Thatcher government on other sectors – quite modestly paced. Yet the impact of even fairly qualified direction from the centre was widely perceived as setting a dangerous precedent. The Statement of National Objectives and Priorities- SNOP- (Home Office 1984) was a short document setting out the purposes and goals of the service as seen from the Home Office's point of view but marked a symbolic moment in probation history, as the Home Office began to take a more interventionist stance in its relationship with the probation service (Mair 1996: 30)

The Statement prioritised the prevention or reduction of reoffending, the reintegration of the offender into the community and the diversion of offenders from custody through the provision of consistent, high quality Social Inquiry Reports which targeted those at greatest risk of custody (Home Office 1984). Probation areas were directed to prepare a local response within the framework set out in SNOP. These responses greatly exercised the various areas, with a variety of responses which ranged from being broadly favourable to the notion of taking on more serious offenders through to an antithetical stance which reiterated the service's social work values and its non-coercive role (Lloyd 1986). Many services saw the problem not as one of developing the confidence of sentencers and the public but rather of *educating them* (Lloyd 1986: 66).

SNOP signalled that the current organisation of the probation service had become a problem for the centre, which sought a more business-like and focused approach. As the Audit Commission noted, five years later:

The publication of the National Statement of Objectives in 1984 had a profound effect. It has accelerated the move from a service consisting of a loose framework of independent practitioners to a much more coherent organisation with clearer patterns of management (Audit Commission 1989).

Within the next few years, the exercise of centralised control and direction would intensify as a result of the increasing problematisation of probation's activities within the new governmental rationality that emphasised accountability, value for money and general scepticism toward the public service. New technologies began to be deployed in support of this growing centralisation of power. 1986 saw the introduction of FMIS, the Financial Management Information System, a tool that would, theoretically utilise financial information and data from the service's PROBIS database to produce detailed information on the cost of resources – allowing comparisons across teams and areas (Columbi 1995; Humphrey 1991). Allied to these were the development of performance indicators (HMIP 1988) to enable comparisons of key areas of activity between services. In 1989, National Standards for community service orders were introduced, setting out the limits of discretion with regard to non-attendance and performance during the order with the aim of ensuring that “community service orders are tough and demanding, that they are managed consistently and with discipline and thus that the public and sentencers can have confidence in them” (Home Office 1990a: para 2.4).

The late 1980s and 1990s saw a plethora of Green and White papers in which new patterns of working and new approaches were proposed (Home Office 1988; 1990a, 1990b). These papers set out a new programme of *punishment in the community*, a programme in which the probation service would have a central part. This, remarked one minister, was an opportunity for the service “to increase the numbers of offenders it supervises, *which should not be missed*” (Patten 1988: 16, emphasis added). Although the implications of not conforming to the new programme were evident in that statement, it is still notable that Patten sought, even at this stage, to reassure the service that its more authoritative role would not compromise “the need for care” (Patten 1988: 21). Despite the changing political discourse, then, welfare needs were still conceived as forming a legitimate focus of the work of probation officers.

The increasing divergence between central government's aims and the probation service's own view of the future became clear. In 1987, a tripartite document by the Association of Chief Officers of Probation, the Central Council of Probation Committees and the National Association of Probation Officers set out the probation service's recommendations for the shape of change over the next five years. Noting the need for new developments to build upon the established strengths of the probation service, the document argued that such developments should be

consistent with the main values underlying probation work- a respect for the worth of each individual; a belief in the freedom of the individual and the capacity of individuals to change for the better; a belief that lasting change can only be developed from within, not imposed from without.. (ACOP, CCPC, NAPO 1987: para 3).

In contrast, A Home Office document from 1989, *Tackling Crime*, emphasised that it was the duty of all the agencies in the criminal justice system – including the probation service – to “demonstrate that crime, particularly serious, violent crime, cannot be tolerated” (Home Office 1989:4). One year later, the Green Paper *Supervision and Punishment in the Community, A Framework for Action*, noted that the probation service had moved on from the ‘old days’:

In the 1960s neither the structure of the service nor its style of operation required a formal statement of central government objectives, and no such framework was provided. Different services and different officers saw their work in different ways (Home Office 1990a: para 2.2).

The way officers would see their work in the future, the paper continued would require a significant shift from the “traditional approach”. Probation Officers were now to confront offenders with the effects of their behaviour on their victims. However, they were still to “influence their conduct and help them, where possible, to lead a new life” (Home Office 1990a: para 3.2). Indeed, social work skills would remain “an important and valuable part of the service’s professional equipment” despite a greater need to make use of other agencies such as those within the voluntary sector. Management would also need to become more coherently organised (Home Office 1990a:para 3.6) whilst in future, probation officers would have to “set their responsibilities as officers of the court within the context of the corporate objectives of the probation service and of the criminal justice system as a whole” (Home Office 1990a: para 3.11). In line with the government’s antipathy to the ‘monopoly’ of the public sector, the paper also remarked that “the disciplines of the market place can often service as an effective guarantee of quality and value for money in the provision of public service...Any review of probation organisation must give the fullest consideration for contracting work out” (Home Office 1990a: para 10.5).

The 1991 Criminal Justice Act

The 1991 Criminal Justice Act promoted a new, neo-liberal sentencing framework predicated upon proportionality of sentence to seriousness of offence. Acknowledging that a reduction of the use of custody was desirable – since prison was a way of “making bad people worse”, the government drew a line under the programme of alternatives to custody that had been developing since the late 1970s. There could be no alternative to custody – only different ways of punishing people (Home Office 1990b: para 4.1) and it was punishment, rather than welfare, that now formed the central dynamic of this new legislation. The Act was *offence* rather than *offender* focused, marking a sharp distinction from welfarist discourse with its focus upon both actions and the antecedent and contextual factors of offending. There was also a shift in the rationale of sentencing, with the Home Office asserting that “punishment can effectively denounce criminal behaviour and exact retribution for it” – although somewhat qualifying this

statement by also stating “reforming offenders is always best if it can be achieved” (Home Office 1990b: paras 2.4 -2.6).

Offences were to be judged according to criteria of seriousness, a conceptual banding of offending in which some offences were “so serious” that custody was the only appropriate response, whilst other offences would be “serious enough” for community penalties. By ensuring that penalties were commensurate with the offence, the Act aimed to provide a “twin track” approach- the polarising of sentencing between very serious and much less serious offences with the former being dealt with more harshly than the latter.

There was a certain tension within this discourse in regard to the use of incarceration. Prison, on the one hand, was to be used for “public protection, denunciation and retribution” (Home Office 1990b: para 2.7). In itself, however, the use of prison was not to be generally encouraged, since, as an institution, prison was “requires virtually no sense of personal responsibility from prisoners” (1990b: para 2.7) – as opposed, by implication, to neo-liberal society whose central rationale is predicated precisely upon such a requirement.

Predicated upon a simple model of social relationships as analogous to economic transactions within the free market of economic liberalism, the new rationalities of neo liberal society sought to regulate social behaviour by shaping the choices made within day to day life through the appeal to the self-interested, rationally embued *homo economicus* of economic liberalism (Culpitt, 1999; Dean 1999; Rose 1996a). Crime, considered in terms of this self-regarding volitional calculus, was the result of a choice to do wrong. Raising the cost of crime by applying punishment, accordingly, would ‘price out’ many offenders from repeating their acts. The application of measures of seriousness–identifying whether offences were serious enough to pose a major risk to the community or were of such low risk as to merit only a token or minor sanction- in theory meant that prison would be used for serious offenders alone. Punishment in the risk society did not, however, follow that logic (Hudson 1995). In the application of punishment, the government now sought to exert more control over the criminal justice system and its activities – with the Home Secretary, Michael Howard, pursuing a policy based on the notion of “prison works” and exhorting the use of custodial measures.

Within this new programme of punishment, the probation service was to play a central role. Probation would now become a sentence in its own right, rather than being imposed “instead of sentencing” (Powers of the Criminal Courts Act 1973 sec 2(1)). Standards of enforcement of community penalties would be set in order to give the public and sentencers confidence in such disposals. A new order, the Combination Order, would allow sentencers to combine probation with community service to deliver a punitive penalty with help attached. The probation service’s Social Enquiry Reports were now to be Pre-Sentence Reports, written to a standard format with the purpose of providing courts

with detailed information about how the offender could be punished in the community, so that option can be fully considered. Its purpose will not be to make recommendations about sentencing or to be a plea in mitigation. (Home Office 1990b: para 3.10).

Soon after its introduction, however, the Act was changed in response to pressure from sentencers, losing some of its more radical features – the limiting of the use of previous convictions in determining sentence and the abolition of unit fines based on income.

In 1992, the Home Office published its three year plan for the probation service (Home Office 1992). The prioritised goals envisaged for the service marked another divergence from the rationality of welfarism. Services to the courts and the public were given a higher salience than rehabilitation. Where welfare-oriented practice addressed the normalisation of various degrees of personal pathology, the Plan was far more oriented toward the supervision and containment of a growing offender population on probation.

The Increasing Role of Risk

The Home Office had taken an increasing role during the 1990s of shaping concepts of the probation task – particularly in relation to risk. A large manual was brought out, complete with training aids, setting out procedures and approaches for considering risk and dangerousness (Home Office 1997a). The document stressed that risk assessment and management formed “two of the most important tasks for the probation service to get right” if the service were to properly fulfil its sole as a public protection agency (Home Office 1997a: i).

The reasons for developing a tighter focus on risk were diverse. “Tightening resources and research evidence” making essential the correct and accurate assessment of levels of risk in order to target “those needs which, if tackled, could reduce offending” (Home Office 1997: i). Emergent here was the concept of *legitimate need*, ‘criminogenic need’ in the language of effectiveness. Within the logics of risk only addressing legitimate needs led to reductions in reoffending and only ‘riskier’ offenders benefited from more intense (costly) intervention. The generic casework approach of welfarism was thus reconstituted into a newer ‘case management’ approach based on the allocation of individuals to risk groups in order to decide on the type and intensity of intervention (Dean 1995, 1999; Culpitt 1999). Within the US criminal justice system, case management is an established feature of service delivery and now, within the probation service, a similar approach was developing (Healey 1999; Enos and Southern 1998)³⁵.

Part of the shift toward the management of risk was to involve the use of actuarial tools for predicting the likelihood of risk, a move encouraged by the Home Office even though it also noted that “there is no evaluated evidence yet in this country that combined risk/needs scales are more effective than traditional methods..” (1997: 6). The benefits of the use of the tools of ‘actuarial justice’ (Feeley and Simon 1992) were said to include, besides the identification of risk and criminogenic need, a means for achieving greater consistency, better quality pre-sentence reports, a standardised form of information exchange between probation services and a means for

better managing resources (Home Office 1997: 6-7). That is to say, the use of risk technologies, even though of unproven efficacy in their stated aims, were already seen as having benefits for managerially-oriented, rather than practitioner-oriented, purposes.

The new focus risk required practitioners to take an active, risk-oriented stance on their collection and use of information, a “cultural shift” as the Home Office noted (1997: 84). Such a shift away from the optimism of welfare was certainly evident: Whilst some offenders might need be motivated by their probation officer to co-operate, “in cases of persistent low motivation to change the appropriate interventions may be monitoring, surveillance and control” (1997:89-90). By wrestling with the “moral and ethical dilemmas” of risk, officers could arrive at a “defensible decision” about an offender (1997: 104).

In parallel to this rapidly expanding concern over techniques of risk management and assessment, there had also been the development of sets of competences, lists of highly specific tasks pertinent to the roles of senior probation officers and probation officers as well as administrative and research and information staff. Occupational standards set out how staff could “use these standards to improve their performance and the performance of services as a whole” (Home Office/CPC/ACOP 1998: vii). The Taylorist implications of such codification of probation activities led one commentator to argue that the service was undergoing a process of ‘MacDonaldisation’ – a ‘dumbing down’ of its knowledge base through the creation of prescriptive and deskilling work routines for staff (Oldfield 1994).

To add insult to injury, a report into the state of probation training, despite failing to provide much in the way of evidence, recommended major changes (Dews and Watts 1994). The election of a Labour government provided no respite from the momentum of centralisation, with the new regime implementing the decision to change training from a university-based degree course to a vocational, on the job modular approach combining some academic input with NVQ sets of competences.

What Works? The Paradox of the Late 1990s

The 1990s, then, saw a change in the relationship between central government and the probation service, moving its role from being an integral part of governmental activity to one in which it too was the subject of close surveillance and control, its performance interpreted through the flurry of performances indicators and efficiency measures that merged from the ‘new public management’ approach now dominant in the public sector. Paradoxically, at the same time that the faith in probation’s abilities in effecting rehabilitation had been undermined by the “nothing works” arguments of earlier research from the 1970s (e.g. Martinson 1974; Lipton Martinson and Wilkes 1975; Brody 1976, 1978), a new body of research evidence had been accumulating during the late 1980s, mainly from Canada and the United States, which showed that various interventions *did* work in reducing recidivism (e.g. *inter alia* Gendreau and Ross

1979, 1987; Andrews and Bonta 1994; McGuire (ed.)1995; Gendreau 1996). The application of the new statistical technique of meta-analysis³⁶ enabled large scale comparisons of hundreds of studies of correctional interventions which showed a generally positive trend toward reduced recidivism in programmes exhibiting certain features in their delivery (Garrett 1985; Andrews *et al*, 1990; Lipsey 1992).

The emergence of this new body of evidence – generically referred to as “What Works,” generated a new faith in the capability of probation to effect change in offenders (but see Pitts 1992 for an alternative view). Conferences followed and the Home Office, in the form of the Probation Inspectorate, began to set out a new agenda for probation. This new agenda was predicated upon the assumption that the research results of meta-analysis were immediately generalisable to any offender population, thus providing a blueprint for effective practice (despite the advice of one meta-analyst who cautions against a ‘magic bullet’ approach (Lipsey 1992:123)). Two reports on effectiveness emerged in quick succession, the first *Strategies for Effective Offender Supervision* (Underdown 1998) set out the principles for practice drawn from the literature. The second, also published in 1998, *Evidence Based Practice* (Chapman and Hough 1998) attempted to distil some of the information from the first report into a more practical format, encouraging probation officers to focus on and examine the outcomes of their practice.

Although the positive findings from research have given new grounds for optimism about probation activities which incorporate the identified elements of successful practice, there is no doubt that the Inspectorate initiative seized the moment in order to drive through an agenda based upon a radical realignment of probation practice with a more corporate approach to criminal justice. New criteria have been developed for programmes, conformity to which will allow ‘accreditation’ by a panel of independent experts (mainly psychologists and psychiatrists). ‘Pathfinder’ programmes have been set up, with a stated aim of delivering these to some 60,000 offenders by the year 2002 (Home Office 1999b). In a wide sense, the epistemic degradation – or, more precisely, the reassignment- of probation’s expertise has continued. Psychology provides the epistemological underpinning for the new initiatives, with programme delivery being seen as a matter of following the instructions in a particular manual. Effective practice is now conformity to a practice manual in delivering programmes set up by others – “programme integrity” (Hollin 1995). The need for evaluation accordingly focuses to a large extent upon staff compliance and conformity – for example videoing group work is done not to examine the interaction of offenders and groupworkers but to ascertain their maintenance of the programme to the set boundaries mapped out in its “treatment” manual (Home Office 2001). Efficiency and effectiveness are thus more easily monitored and measured as a function of a rigorous adherence to the prescriptions of service delivery. Effective practice, then, is a function of procedural

compliance and the immediate aim of probation management must be to ensure that such compliance is enacted.

Whether or not the outcomes of these programmes will be as successful as the Home Office hope, there is, in line with the central arguments in this study, now an identifiable shift away from the personalised welfarist model of probation toward one in which accountability and compliance with centralised objectives equate with good and effective practice and in which individual offenders are selected upon the basis of conformity to certain risk profiles. From representing a *mechanism* of governance, probation has become an *objective* of new modes of governance. In the next chapter I discuss how the short history of the probation service, has been marked by certain shifting conceptions of the its role and purpose, drawing on differing models of the offender in order to propose solutions to their offending. The modes of *governance* employed to bring about change will be discussed in terms of their resonance with political rationalities.

3 Probation as Government

Philanthropic Technologies and the Police Court Mission

In this chapter I discuss the probation service's role as a mode of governance from its beginnings in the 1870s through to the end of the *twentieth* century. I argue that the basic model of probation incorporated aspects of philanthropic interventions, a model which was invested with new knowledges and discourses deriving from the wider political problematisations I have referred to previously as welfarism and neo-liberalism. I begin the chapter by a short discussion of the way probation practice contributed several philanthropic techniques to the courtroom process.

The probation service emerged from the activities of the police court missionaries, incorporating the governmental technologies of late nineteenth century philanthropy into the criminal justice system and underpinning these with legal powers. It is important to highlight these technical aspects of philanthropy which came to embody the probation technique, particularly since this provides an antidote to teleological understandings of probation history.

The introduction of the Police Court Missionaries into the activities of the Criminal Justice System set in place a new expertise, predicated upon social authority which would provide a platform for the emergence of probation during the first decade of the *twentieth* century. In identifying the Police Court Mission as embodying expertise, I intend this notion of expert authority to encompass the series of practices described by Rose as:

a particular kind of social *authority*, characteristically deployed around *problems*, exercising a certain *diagnostic* gaze, grounded in a claim to *truth*, asserting technical *efficacy*, and avowing *humane* ethical virtues (Rose 1998:86).

Three techniques are discernible from a study of the work of the police court missions. These pertain to *inquiry*, '*friendship*' and *personal influence*. The technique of inquiry, deployed in applications for welfare relief, grafted itself into the court process, enabling sentencers to increase the knowledge they had of defendants and to incorporate such extra-legal information into their decision making. '*Friendship*' enabled philanthropic assistance to be carried out through the everyday interactions and routines of social intercourse whilst *personal influence* saw the improvement of lower class deportment as best effected through the tutelage and pastoral care of a respectable individual, a "moral personage" as Foucault puts it (Foucault 1967:251).

The introduction of these techniques into the court setting was effected through an initial problematisation of a particular aspect of working class life which had aroused respectable concern. Such concern focused on the frequent and cyclic appearance in courts of summary jurisdiction of offenders whose offences were as a result of, or were connected to, inebriety. Offenders appearing at these courts were overwhelmingly poor, frequently alcoholic or had

offended whilst under the influence of drink. Their offences were more an affront to *order* than to the Law itself (Shiman 1988; Harrison 1972). Yet it was the law which was called on to deal with this problematic population, a population whose persistent recidivism defied the power of the law to effect change in them. The missionaries came to the court setting – as they did to many other settings in which inebriacy was to be found (Harrison 1971)- in order to provide assistance and moral help in order to “reclaim” the inebriate offender. The knowledge that the missionaries had of such individuals led sentencers to begin to draw on this knowledge and to request them to make inquiries in other cases. Whilst this was a new process in the court setting, inquiry was an established philanthropic activity.

Inquiry

From offering material relief to the poor, late nineteenth century philanthropy increasingly “concentrated upon merging assistance with advice, counselling and moralisation”(Garland 1985:115). In this new approach, philanthropists were concerned to adjust and align attitudes and behaviour, through gentle persuasion, moral exhortation and example, in order that the individual concerned might then partake properly of societal duties and obligations - particularly with regard to habits of thrift, temperance, industry and clean living. During this period, the perceived need to co-ordinate the plethora of benevolent societies, charitable agencies and ad hoc philanthropy led to the formation in 1869 of what would become the Charity Organisation Society³⁷. For the C.O.S. , charity was to be the “work of the social physician” (Loch 1883: 16). The society aimed to co-ordinate philanthropic initiatives such as those aimed at providing education, industrial training, employment and temperance reform (Mowatt 1961; Young and Ashton 1956; Bosanquet 1914). The C.O.S aimed to temporarily alleviate the circumstances which prevented the deserving individual from taking his or her proper place on the meritocratic ladder of success. To this end, it was necessary to investigate thoroughly each individual case in order to ascertain that the would-be recipient of assistance was, in fact, truly deserving of such help and that there were no others who could provide the wherewithal to assist³⁸.

Of major import for this study was the subsequent effect of the C.O.S upon the development of various forms of bureaucratic (and particularly state run) social work. In particular, the emphasis upon a rigorous empiricism in the form of a detailed investigation and documentation of each and every case provided a model for the development of bureaucratic social work in the years to come through a training school, where social workers, health visitors and almoners as well as probation officers would receive training in methods rooted in and developed from, techniques for differentiating between the deserving and undeserving poor (Rooff 1957: 284). The influence of the Charity Organisation Society was considerable and far-reaching: even in the 1920s a handbook for social workers recommended voluntary work with

the C.O.S as a means of learning the “methods of inquiry” (Attlee 1920: 142). These methods of inquiry were transferable into other areas of social work. As Young and Ashton remark, the C.O.S provided a programme which generated “a body of transmissible knowledge, and lost no opportunity to pass it on, not only to its own workers, but to social workers and philanthropists wherever they were to be found” (Young and Ashton 1956:105). From the late 1870s, in the courtroom the Police Court Mission deployed such inquiry techniques to a new purpose, identifying those deserving of leniency rather than punishment.

The austere dialogue between the Law and its subjects had not previously partaken of causal explanations of crime, and so ruled out the consideration of circumstantial or contextual information, relying upon the identification of guilt or innocence as the major dynamic of sentencing. This approach generated large numbers of prison sentences, particularly since the poor were unable or unlikely to pay fines. The identification of these offenders as a clearly defined problem group by the religious authorities led to the formation of the Police Court Mission in 1876 and provided both the means of problematisation and, simultaneously, the solution. Since the law could only judge culpability, the Police Court Mission filled the gap between the court and the vague, unknown world of the inebriate offender, acting as a relay between sentencer and offender. In an era in which increasing knowledge of human behaviour was becoming a necessary concomitant for “the management of the population in all its depths and its details,” the sentencing process lacked the ability to ‘know’ its subjects, to grasp the minutiae and specific details of their lives, the patterns and layers of their experiences and inclinations (Foucault 1979:19). This lack of knowledge of the amorphous mass of the poor created a gap between the state and its subjects and between those charged with the exercise of the state’s power over them. Charge sheets and criminal records were not sufficient for the proper management of individuals. What was needed was an insight into their lived experiences:

What more inevitably blundering course of proceeding can be imagined than that of men trying to construct laws for the management of a far-removed people from the facts of official records? (Waugh 1876: 156).

The use of missionaries to provide magistrates with such knowledge closed this epistemological gap between the Law and its subjects, providing an objective and morally based mechanism for the investigation of the underlying factors in a case, identifying not just the transgression as an act of contravening the law but also the moral lapses and irregularities of thought and conduct that contributed toward the commission of the offence. In the provision of social enquiries for the courts, the missionaries made use of a moral examination, foregrounding the salient facts of the individual’s life for the court, expounding upon the offender’s culpability, remorse and his or her capacities, capabilities and potentials for change within the synoptic biography provided by the report. This discourse provided “the mechanisms of legal punishment with a justifiable hold not only on offences, but on individuals; not only on what they do, but

also on what they are, will be, may be” (Foucault 1979: 18). By the inscription of the lives of offenders into this explanatory moral narrative, it was possible to ascertain the location of the individual along a continuum of deviance in which both previous illegalities and moral considerations provided indicators of a individual’s potential for reclamation to respectable life.

The introduction of social enquiry into the sentencing process, then, had some important consequences. Firstly, the sovereign power of the Law began to admit another discourse into the sentencing process with a view to the more efficient disposal of the individual’s case than was possible before and with normative rather than punitive, intent (Foucault 1980:108). This new discourse provided a moral evaluation in which the material circumstances of family life, employment, social deportment, adherence to social norms and so forth, were taken into consideration as mediating factors between individual volition and the commission of an offence. For many of the early missionaries, this was but an instance of the broader programme of modernist optimism, “a vision of the years to come when punishment would part company with revenge, and link itself with reform not only of the law but of human character” (Harris 1937: 25).

Secondly, the offender was now increasingly viewed from a perspective in which delinquent and criminal events, which had previously been regarded as resulting from moral lapse or lack were now understood in terms of an individual’s failings and weaknesses: inebriacy, disadvantage, sickness, poverty indolence and so forth all contributed toward the epistemic make up of an offender who was socially inadequate and whose offending sprang from the perils and pitfalls that dogged his or her life and which prevented the individual from attending to the norms of social behaviour. Punishment in such cases made little sense in a society in which the individual was now increasingly seen as an economic resource. The offending of these inadequates, then, represented a deviation from social norms which could be corrected via appropriate intervention with a mutually beneficial outcome for both state and individual.

Thirdly, the notion that an offender could best be changed and his/her behaviour corrected through influence and example introduced a notion of reflexivity into the way the deviant was construed and understood. The inadequate individual was to be influenced by a combination of disciplinary surveillance and pastoral care. These were combined in a relationship which was no longer reliant upon goodwill and trust: the help and assistance of the probation officer were combined in an “enforced relationship.” This was clearly acknowledged in the Departmental Committee report on the introduction of the 1907 Act:

The formality of making the order, the regular visits and reports, the knowledge that supervision is not merely by the agent of a philanthropic society, but a person who is, in addition or alternatively, a legally appointed officer of the court, the imposition of definite conditions clearly stated in black and white – all of these things have a powerful influence upon the mind of the offender. (Home Office 1910a: para 10)

Friendship

As well as making inquiries for the courts, the missionaries began to supervise some offenders with the courts discharging the offender into their care (King 1958; Bochel 1976). For these missionaries, the basic vehicle of working with offenders revolved round around the establishment of “friendship between the classes” which informed much late Victorian philanthropy and which sought to effect influence through the personal qualities of the philanthropist.

Such a concern occurred within a political context in which the rigorous austerity of the C.O.S’s approach was increasingly unpopular - as indeed was the entire edifice of the Poor Law (Garland 1985). For philanthropists such as Canon Barnett, a formerly prominent member of the C.O.S –and by now at odds with the tenets of scientific charity their work was to “bind the classes with friendship” (Barnet and Barnett 1888). Even Octavia Hill, a staunch supporter of the C.O.S, remarked that the society “will have to secure more extended *personal influence* between rich and poor if it is to be permanently successful” (Hill 1883:67, emphasis added)³⁹. Though the “gift of friendship”, the late Victorian charitable visitor was able to gain access to the homes of the poor enabling the accumulation of a new knowledge of the lower orders whilst simultaneously exposing them to the ‘friendly influence’ of the charitable visitor. “Such a knowledge”, wrote the veteran philanthropist Octavia Hill,

gives power to see the real position of families; to suggest in time the inevitable result of certain habits; to urge such measures as shall secure the education of the children and their establishment in life; to keep alive the germs of energy; to waken the gentler thought.. (Hill 1883: 23).

The functions of the philanthropic visitor performed a dual function. On the one hand, the concern was with *moralisation*, assisting with financial and material problems. On the other was *normalisation*, a focus upon the inculcation of norms of proper and desirable behaviour (Donzelot 1980). Such norms varied across a wide range of conduct, from church attendance, through norms of health and hygiene, temperance and domestic competence to a centred around a steady emphasis upon the need for hard work, family-oriented life and prudent saving. Often, the absence of these norms could be linked into a causal chain between the original minor failing and a more serious, subsequent, outcome:

How much of the drinking habit of our people is due to their miserable, badly-cooked food, the absence of home comfort in the tasty, well-prepared meal, and the longing in the master of the house to wash his mouth out at the public house after such poor, ill-tasting fare (Hopkins, 1889: 69).

“A Newer and Better Way to Govern”

Shorn of religious and philanthropic discourse, these methods of philanthropy-casework, personal influence and home visiting- provided technical approaches aligned together

in overlapping and intersecting strategies of providing investigative, morally-qualified and outcome-oriented assistance. The compassionate and pragmatic relief of suffering and hardship informed by Christian love for one's fellows gave way to practices which increasingly placed an emphasis upon a more "scientific" approach. That is to say, an approach predicated upon objective knowledge rather than goodwill. The philanthropic figure also changed, moving from the well-meaning middle or upper class individual whose interventions were based upon respectability and vocation to an official whose expertise was a product of training or official status.

For the embryonic probation service, the legal system gave official powers to an amalgam of these philanthropic techniques which had been deployed initially to "rescue" the inebriate from further depredations. After the 1907 Act, the law served as a background threat of further punishment whilst the police court missionary provided Christian help with material needs at the same time maintaining a pedagogic moral dialogue in which the offender was exhorted to re-evaluate and reconsider his or her life - through the signing of the pledge, attending religious meetings, adhering to standards of industry and so on. The very act of commitment entailed in the pledge of abstinence was seen in itself as a major factor in the reform of the individual, effecting a "revolution for good" within the signatory (Holmes 1902: 19).

These shifts reflected a modification and requalification of the consideration of the individual as citizen. The nineteenth century Liberal conception of the citizen as a free, self-motivated actor whose actions were to be enabled, but not disturbed by, government, began to shift toward one of an individual with rights and obligations construed within a reciprocal nexus with the state. Indeed, the freedom of the individual could be construed as a necessary condition for the rehabilitation of the offender, thus explaining why prisons failed to effect reformation and rehabilitation:

Moral strength cannot be developed in the absence of temptation, for moral qualities must be free or die! (Holmes 1912: 71)

The new, modern citizen, however, was deemed rational only to a point: the effects of environment and heredity were such that some behaviour was less the result of free-will and more the product of developmental and inherent characteristics: "I am persuaded that the great amount of real crime comes from pathological causes" (Holmes quoted in Tallack 1905: 202). Such pathological causes might be "some peculiar condition of the mind or, it may be, of the body of the perpetrator" (Freeman 1914: 230). For many, including Thomas Holmes the missionary, eugenics held the solution to such problematic offenders. But for other, less intransigent delinquents what was becoming increasingly clear to contemporary observers was that "present methods of dealing with these offenders are hardly satisfactory...short sentences of imprisonment can do them no good whatsoever" (Gamon 1907: 87). Probation, noted one

commentator a year after its official inception, was able to work in a more subtle manner than incarceration, providing

a test of the character of a convicted offender under suspension of judgement, in order that the court may determine if the offender is fit to retain his or her place as a helpful member of society ...It is established for the purpose of correction and oversight. It is a conditional freedom. It recognises that the newer and better way to govern the law-breaker is not through the expiring system of the cell and the lash, but rather through the mind and the heart. (Bridgwater 1909:9)

Young Offenders: Aiming at Heart and Home

The emergence of probation, then, came amidst the wider development of various new, more inclusive tactics and strategies involved in the regulation of the working classes (Harris 1993). A diverse reformist programme campaigned for the introduction of a probation service along the lines of the American model (Bailey 1987; Bochel 1976), whilst in the penal realm, shifting conceptions of the formation of the personality and character of the young offender were particularly salient in the move toward the use of non-custodial measures. Benjamin Waugh in 1876 had argued that prison for juveniles “aggravates the very evils it was intended to destroy”, arguing that the real problem lay in ensuring the maintenance of the constant discipline of schooling until the child was ready for work (Waugh 1876:10, 134)⁴⁰.

The problem of the institutional training and disciplining of juveniles appeared to be made worse by the fact that those with mental and physical disabilities were often rejected by reformatories and industrial schools and were thus propelled back onto the streets undisciplined and unchastened. The veteran missionary Thomas Holmes lamenting that the reformatories and industrial schools did not want ‘degenerates,’ reflected that such children “lead a miserable or criminal existence until they go to prison” (Holmes 1902:10)⁴¹.

Whilst for some of these offenders there was little that could be done, for others there was a recognition that fixed, institutional punishment did not make any impact upon subsequent behaviour, nor was its systematic application to all aspects of delinquency resonant with the growing emphasis upon the welfare of citizens. The need for a more flexible form of supervision that focused on inclusion rather than exclusion and upon a more subtle but effective attempt to reclaim the individual began to achieve more prominence on the penal agenda. Thomas Holmes had no doubts about what was needed: “It is not punishment, but discipline, that the child requires ...such a discipline, continuous but inoppressive, a probation system is eminently fitted to supply..” (Holmes 1900b: 211). In 1908, the Children Act - a “children’s charter’ established the special treatment of children within the judicial system and it was the new probation service who were to provide much of the necessary input into shaping and reshaping, the attitudes and behaviours of young delinquents (Bailey 1987: 8).

The Pastoral Model of Probation

By the 1907 Probation of Offenders Act, the use of the agents of religious philanthropy had “become a vital part of the court’s mechanism” (Gamon 1907: 182), a mechanism that reflected wider changes in the emergent rationalities of citizenship and social administration. This mechanism of governance comprised

- i) The provision of a *moral evaluation* of the offender for the courts in order to ascertain whether to address the welfare needs of the offender or to impose punishment.
- ii) A focus on the *individual* as the point and purpose of intervention rather than the crime: “Modern science has learnt to look not so much to the offence as to the offender, and to regard crime rather as the manifestation of a vicious character” (Holmes 1900b: 209).
- iii) A concern for the *social welfare* of the offender: a belief that the *moral reclamation of the offender* would be accompanied by the correction of deviant behaviour and the adoption of a respectable lifestyle.
- v) A belief that reclamation was best accomplished through *friendship and the power of personal influence* - a close relationship between one who cared about the offender through Christian fraternity and an offender increasingly motivated toward personal change through the awakening of the inherent good within him/her. “[i]t is a system in which rules are comparatively unimportant, and personality is everything” (Home Office 1909: para 28).

This initial welfarist framework of probation, then, was structured around a set of precepts based on the appropriate type, form and impact of a certain form of intervention:

- i) A concern with the threat to order caused by the ‘social inadequate’
- ii) An acceptance that the criminal and delinquent behaviour of individuals was not positively affected by the use of imprisonment or other punitive measures
- iii) An understanding of this behaviour as being shaped by personal and material factors
- iv) A conception of the socially inadequate as open to being ‘saved’ or ‘reclaimed’ morally
- v) A conception of the act of saving as involving personalised intervention by an appropriate, ‘moral personage’ whose influence served as the basis for effecting change through the relationship between officer and offender.
- vi) The acceptance of *religious philanthropy* as being suitable for this role.
- vii) A shifting picture of the citizen from being a *juridical* subject to a *social* subject imbued with certain capacities and dispositions that might be invoked or stimulated in order to produce socially acceptable behaviour.
- viii) A technique that addressed this social subject in terms of *subjectivity* -focusing upon the individual as a reflecting and reflexive being able to participate in his/her reclamation

This overall approach involved probation officers increasingly in an approach which aimed to “inculcate specific norms and attitudes...to straighten out characters and to reform the personality of their clients in accordance with the requirements of ‘good citizenship’ (Garland

1985: 238). It was this 'welfarist' approach to dealing with offenders that probation shared with other agencies within that matrix of modern institutions whose authority defined and delineated the realm of "the social" (Hewitt 1983: 75; Donzelot 1980). The provision of assistance by probation officers, however, was seen as distinct from other forms of welfare assistance, with the Departmental Committee of 1909 keen to make a distinction between probation and charitable relief (Home Office 1910a: para 42)⁴².

Subsequent shifts in the epistemological landscape of the *twentieth* century would overlay to and colonise, these basic features of late nineteenth century philanthropy. Where philanthropy had sought to identify those whose souls were still open to persuasion and reclamation, probation carried out a similar task in the name of the law. The focus of probation work would experience a gradual transformation from 'soul' to 'psyche' although the aim, no matter what epistemological vocabulary such transformation was couched in, remained the offender's gradual reorientation toward pro-social activity and deportment. Accompanying this shift from a religious to secular logic was a shift in the way 'salvation' was construed. It might be imagined that in an increasingly secular society, the saving of souls was of diminishing importance, yet, in fact, salvation - as an abstract rather than theological concept- was to remain a key activity in probation.

Social salvation and citizenship

The individual offender, then, was to be 'governed' by the probation service. This entailed a focus upon the 'conduct of conduct', the inculcation not only of conformity (discipline) but of a reflexivity toward one's comportment in relation to others, society and self. This government formed part of a growing social pedagogy during the 1920s and 1930s, as the contours of private life were increasingly inscribed by the discourses of a network of welfare agencies, institutions and other sites of expertise (Donzelot 1980; Rose 1985). In this discursive network, the power of the agencies involved in addressing the problems of the social was guaranteed and legitimated by knowledge. This knowledge was undergoing a steady formalisation augmenting the earlier 'sympathetic' approach of early philanthropical social work without affecting the latter's overall aim of empathy and understanding: "to sympathise one must understand, and to understand one must know" (Attlee 1920:129).

The role of probation in shaping the realm of the social enmeshed with the concepts of social reconstruction following the First World War and the expansion of notions of citizenship that encompassed the reciprocal obligations of both state and citizen. The organisation of a democratic and inclusive state entailed forms of administration and social organisation that did not rely upon coercion or overt class dominance. Even one of the leading proponents of the Charity Organisation Society and a vigorous opponent of state intervention had acknowledged that the modern state "cannot afford to have any outcast or excluded classes, citizens that are not

citizens" (Loch quoted in Mowatt 1961:70). Accordingly, the state was increasingly developing ways in which it could act "as the co-ordinating factor in making all individual efforts work for the good of citizens" (Attlee 1920:18).

Much of the work that followed, began introduced a wide ranging pedagogy, from the introduction of a universal system of education through to the establishment of Health Visitors, School Medical Officers and other officials of the social (Rose 1985). These nodes in the growing welfarist network marked out points in the daily lives of individuals and families where a corrective 'gaze' could be brought to bear on small and often mundane aspects of life, providing advice and, where necessary, intervention, albeit framed wherever possible in an assistential discourse. This network of interventions operated on the basis of their beneficial contribution to society and the individual, enveloping the individual in a kind of "supervised freedom" (Donzelot 1980: 47). In terms of the probation service's activities, this implied the restitution of citizenship through tutelage in comportment appropriate to the status of citizenship and through assistance with material barriers to normal behaviour. Once the period of probation supervision was over, the offender could return to the path of civic virtue unsullied by a conviction being recorded against him/her and with a properly adjusted sense of civic and familial duty. The Lord Chief Justice, Lord Hewart of Bury, in delivering one of the Clarke Hall Lectures, pointed out that probation did not involve a negative sanction by the state, but rather effected a positive intervention in that "[w]hat is desired is not merely to prevent the manufacture of criminals, but actually to multiply the number of good citizens" (Hewart 1937:139). Probation intervention, then, had achieved its purpose when the offender had recognised the reciprocal nexus of obligation between state and citizen, when he had "grown to realize the strength of friendship and also to realize that he really counts as a citizen" (Harris 1937:26).

In this manufacture of citizens, finding and securing employment was of particular importance, both providing the individual with an income and providing a regular discipline through the daily rhythm of labour. The Church of England Temperance Society had provided work yards during the late nineteenth century where offenders could chop wood and do other tasks designed to inculcate the discipline of labour. These work yards, according to Society's annual report for 1896 acted as 'character factories' which provided...the first step on the upgrade of restoration to social position and integrity" (C.E.T.S. 1896: 28).

Where work was a means of restoring a 'fallen character' during the late nineteenth century, by the 1930s, however, the moral connotation of work had become overlaid by more complex issues of the relationship between state and citizen. By providing real work for offenders, one commentator argued, "...[t]hey at once become real citizens...As employed persons they have an insurance card and stamps.." (Whaite 1930: 45-6). This linking of the offender back into the state-citizen nexus by means of the insurance system was to be effected

through the articulation of the axes of social insurance and social work upon the errant citizen with the result, that "he or she would become an economic asset." (Whaite 1930:45-6).

From a more centralised perspective, the Home Office was keen to see the development of mechanisms of punishment into mechanisms of governance which produced active and able citizens whether by probation officers or other means of training such as an 'approved' school: "It cannot be too strongly emphasised that the efficiency of the school training can only be judged by the ability of the boys and girls to become self-respecting citizens." (Home Office 1925:28). In order to accomplish the restoration or introduction to the roles and capacities of citizenship, it was necessary for the probation officer as a social worker (Attlee 1920) to be familiar with "the outlines of our complicated national system...of 'collective security'" (Macadam 1937:139). The traditional values and qualities of probation officers now needed to be augmented by "opportunities of education and training which will equip the worker to play his part effectively in building a new civilization in which opportunities for a full, happy and useful life are open to all " (Macadam 1937: 140). Probation now represented one element in a wider programme of citizenship in which the diverse objectives of welfare were to be achieved by a myriad of agencies and authorities whose activities and interventions were, broadly speaking, of an educational and instructive type.

Educating the Family

The welfare network that was slowly emerging prior to the Second World War tended to be conceived in terms of its integrative function: citizens were not born to the role but were socialised into it. From the 1870s onwards, and increasingly throughout the 1920s, 30s and 40s, we find in welfare and probation discourse constant references to the inculcation of discipline via mechanisms of family, school or other institutional contact. Indeed, the original temperance movement itself had aimed at "directly educating public opinion" (Harrison 1971: 369). This broad educative discourse was founded on assumptions that through processes of normal development and socialisation, citizenship could be learned and absorbed. There were those however who, due to faulty socialisation - either the product of inherent abnormality or inadequate training - failed to realise the benefits of citizenship: families might lack the ability to socialise their children; mothers might lack the requisite maternal and domestic skills to provide both husband and children with material and emotional comfort and fathers might fail to act as a responsible breadwinner for the family. Where this was the case, investigation, diagnosis and treatment could enable some of these unfortunates to achieve their proper place in society. By the eve of World War 2, the Principal Probation Officer for the Metropolitan Area noted that probation:

"has now advanced far beyond a purely negative effort to adjust the offender's environment so that he will not have the temptation to offend again...[i]t has developed into a positive

attempt to train the offender's character so he will become master of his own circumstances" (Clutton Brock 1938: 23-25).

The probation task, then, had moved on from providing support and advice to help avoid temptation in the future: the probation officer's task was now one of "reconditioning human beings to take their place in society" (Lieck 1937: 161). Such reconditioning would naturally vary according to the degree of problem encountered, marital problems, for example, might be addressed in various ways: for women "a course of cookery is at least as useful as lessons in sexual behaviour" (Lieck 1937: 161). This pedagogical model of intervention rested upon the logics and concepts of the welfarist rationality, in which a wide variety of behaviours could be addressed and modified according to their deviation from expected standards and norms. According to which agency of social expertise was involved, the means differed to some extent but the ends remained the same: "the real object of education is character building and preparation for parenthood and citizenship" (Cottam 1943: 72).

Nor was it only in the field of criminality that probation oriented itself toward the family. The 1937 Domestic Procedure (Domestic Proceedings Act) also formalised the probation officer's work with domestic disputes, bastardy enquiries and divorce court work. This required a systematic approach, as NAPO's General Secretary put it, to the "preservation of the unity of family life" (Norman 1937: 146)⁴³. This approach operated alongside probation's criminal justice role, and extended the pedagogical task along the continuum of deviance which linked familial tensions and ruptures as incipient events predictive of later and more serious deviance.

Probation as Government 1876-1939

Whilst the shape of probation practice remained ostensibly much the same between the inception of the Police Court Mission and the outbreak of the Second World War, the underlying knowledges and rationalities that informed probation practice shifted considerably. This is hardly surprising since the original motive for state incorporation of the police court missions reflected more a pragmatic approach rather than a theoretically informed plan of action. So resonant was the emerging logic of the interventive, governmental state with the *role* of the missionaries, that they could be adopted with scarcely a word of protest or dissent – except where their religious activities were thought unnecessary (Leeson 1914). The activities of the philanthropists then, in providing the courts with their synoptic biographies of offenders, acted as a technology of governance, an "inscription device" by which "reality is made stable, mobile, comparable, combinable. It is rendered in a form in which it can be debated and diagnosed" (Rose and Miller 1992: 179).

The activities of the nascent probation service, then, served as a mechanism of governance, addressing and tending to a particular problematic field of social life. At first, this problematisation articulated particular concerns about the behaviour of certain 'risky' sections of

the poor. But this role rapidly expanded beyond cases of inebriation, enabling the missionaries to deal with a wider cross section of the delinquent public and in doing so, enlarging their role within the court process:

"While the missionary was confined to cases of actual intoxication the work was necessarily limited, but as it broadened out it began to enter into the many details of life...there were...causes of ill to be removed, opportunities of self-help to be provided...the power of a spiritual agency was needed to get at the back of offences, to reach the hearts of offenders" (Potter 1927: 9).

The initial use of the missionaries by the courts had identified those deserving of assistance and mercy, those who might be "saved" and the turning point for many was the signing of the pledge of abstinence (Harris 1937:18). Although pledges were increasingly less important as the probation service became more and more secular in its orientation, the notion of "the promise," however, the offender's undertaking to co-operate with the authority of the probation officer, remained a powerful technical concept in probation practice, albeit increasingly reconstituted by the shifting rationalities which underpinned practice, such that the offender's agreement to be placed on probation was a necessary antecedent to the making of the order (Le Mesurier 1935).

The government of offenders between 1907 and the Second World War, then, was founded upon the "friendship" – the positive, influential and beneficial relationship- established between probation officer and probationer. The conception of this friendship in terms of bringing to bear a respectable influence is well expressed by the 1909 Committee:

"There are many persons on whom the effect of such influence, applied at the moment when the commission of an offence reveals the special need of it, may be as valuable as the skilled help of a doctor to a person suffering from disease. Often without friends of their own, more often with friends only of a degraded type, out of touch with any civilising influence, the probation officer comes to them from a different level of society, giving a helping hand to lift them out of the groove that leads to serious crime.. (Home Office 1910a: para 4).

Friendship combined spiritual guidance (to a varying degree according to the vocation of the probation officer), material assistance- since it was predominantly the poor who provided the natural constituency of the probation officer's work and a firm but benevolent discipline, finding opportunities for employment, visiting the home and so forth. The officer was, therefore, able to exercise both disciplinary power – in terms of compelling adherence to the requirements of the order and in seeking useful employment- whilst also bringing to bear a pastoral power which operated at the level of subjectivity – the level which Foucault refers to as "ethical" (Foucault 1988b:69).

From the 1920s, the activities of officers began to draw on other, more authoritative, discourses to justify their work. In particular, psychology provided an influential model of the individual, although this was perhaps more true initially within the pages of *Probation*, the NAPO journal than in actual practice. By the mid 1920s, advances in psychology were taken as

an indication that social work (including probation) required knowledge of the new methods of psychology to inform its dealings with "social misfits" and that such knowledge should be part of "the necessary equipment of every social worker" (Fox 1926 quoted in Yellowly 1980: 47-48).

The Tavistock Clinic, with its groundbreaking work on child guidance, was particularly influential, ensuring that *Probation's* readers were familiar with the concept of behaviour as the result of causes other than conscious and wilful volition (Crichton-Miller 1929:12). As Miller and Rose note, the Tavistock acted as a pivotal mechanism in introducing the logic and vocabulary of psychology into the discourses of the juvenile court (Miller and Rose 1988:178). The gradual incorporation of notions of the role of unconscious motivation in the commission of crime lent support to a conception of the probation officer in a quasi-medical role, "a sort of spiritual doctor," seeking out causes rather than symptoms (Lieck 1937:161). The impact of psychology, moreover, began to transcribe the appropriate plane of intervention for the probation officer from a moral to an emotional register. This involved probation less in punishment than in a form of social defence, effected through the "re-formation" of the individual in which both society and offender were protected by the reconstitution of the offender as a responsible citizen (de Constobadie 1930: 32).

Probation also was able to move within the sphere of the family in response to non-criminal acts since its work in dealing with matrimonial conciliation, divorce and custody issues as well as bastardy enquiries, gave it a distinct civil role which overlapped with its statutory criminal work without apparent tension. The relay between the two was provided by psychological knowledge which connected the 'broken home' to delinquency, deviance and mental problems. Assistance was needed not only for the delinquent but also for the parents in the "management of childhood" as the Medical Director of the Tavistock Clinic put it (Rees 1939: 67).

With a more scientific rationality underpinning it, the service began to detach from its religious foundations, and became more consciously a part of the plethora of agencies engaged in the management of the social sphere. This detachment from punishment reflected the growing welfarist view that crime was not just a coincident evil to the growth of industrial society but a *resultant* one, a fact that had been hitherto ignored, with the effect that the system of justice has been predicated upon "the false assumption that the criminal and not society is always to blame" (Hausmann 1928: viii) Even religious commentators now saw the work of the service less in purely spiritual terms and more as part of a "ministry of social healing" (Bishop of Chichester 1938: 184).

Probation, then, formed a relay between the mechanisms by which social governance was enacted and the more formal apparatus of the criminal justice system, linking the inadequate citizen to other appropriate agencies as required whilst also maintaining its own role amongst the

plethora of “social experts” whose overall goal was the production of an “active citizen” (Norman 1939:52; Hopkins 1939:53).

By the mid 1930s probation discourse had so adapted to the growth of its social role that it was possible to speak of the ‘social salvation’ of the individual (Lieck 1937: 161). Psychology could identify not just flaws and failings in the character, but the very root of problematic behaviours. The solutions enabled by psychological knowledge shifted away from the old need to discern those deserving or undeserving of some form of help to the question of *what type* of help was required in a particular situation.

“The Scientific Mind In The Service Of The Merciful Heart”

The consolidation and expansion of welfarist mechanisms following World War 2 gave a coherence and shape to the network of those agencies which shaped and managed the social realm, linking intervention and insurance within a rubric of citizenship and science which made such intervention both necessary and effected it as part of the *rights* of citizenship. Where charity and early systems of welfare had been faced with the task of providing relief in a society in which inequality was systemically in-built, in the emergent welfarist society, with its network of agencies committed to the eradication of inequalities, a more concerted focus could be now brought to bear on those who failed to comport themselves in a manner appropriate for citizens. By the mid 1950s it was established that probation officers need not concern themselves with material need since this was the province of other experts in the field of welfare (King 1958:49). Probation, however, now began to define its activities in relation to a more clearly articulated form of expertise. The rationality underpinning the deployment of this expertise embodied a faith in positivistic science and an optimistic belief in the possibility of the amelioration and eventual resolution of social problems. The majority of these problems were seen within the Fordist post war state as occurring at an individual level with the result that society was forced to make provision – in both its own interest as well as that of the individuals concerned- for those who “cannot manage their affairs unaided for reasons of personal, physical or economic inadequacy” (King 1958:44).

The problems of inadequacy were problematised and resolved within a discourse whose rationality incorporated psychological and humanist concepts, an approach whose technique was both expertise and common sense, expressed in the language of *social casework*. As a conception of working, casework had been around for some time⁴⁴: Mary Richmond’s classic *Social casework* had been first published in 1917 and was well known to British social workers (Richmond 1965[1917]). In probation, however, casework was absorbed slowly into mainstream activity, but was given a greater emphasis as a result of the developments in psychology which occurred during the war. The model of post-war casework which emerged was informed by the research of Bowlby, Stott and Winnicott into security and early development as well as

incorporating a plentiful dose of Freud into the bargain (Yellowly 1980; Stott 1950; Bowlby 1951;1957). Casework provided the service with a professional voice⁴⁵ which combined the benefits of science with the practical experiences of yore, recognising that crime stemmed not from wickedness but from defective socialisation in early life (Feversham 1956:18). The teleological journey involved in reaching this knowledge was implicit in a piece by social work educator Eileen Younghusband who argued that advances in psychological knowledge now required a reorientation of the “old secure framework of every profession involving close personal relationships”⁴⁶, with the social worker now required to provide the client with insight into

..all the major experiences and relationships which go into making him the person he is, with conflicts of whose origin he may be unaware, with problems whose solution may be less in external circumstances than in his own attitudes, with tensions, faulty relationship, inabilities to face reality, hardened into forms which he cannot alter unaided (Younghusband, 1950: 193-4).

The adaptation of psychology into probation discourse was facilitated by the fact that psychology was resonant with the model of the individual employed by religious philanthropy. The focus on subjectivity, change through introspection and self-monitoring that characterised morally-based work with offenders lent itself to the adoption of the newer, more scientific and rational, discourse of psychology. This new epistemic underpinning also gave the probation officer’s role a more neutral and technical approach, shifting the officer’s authority from *social* authority to a technical, scientific and ethical base that detached it from the class based interventions of philanthropy and recast it as another humane technology of the welfare state (Rose 1988).

Casework offered a reflective approach to working with offenders. It operated from a view point that saw delinquency and crime as but instances of wider, problematic, causes. Informed by research findings pertaining to the role of the unconscious in manifesting behaviour, casework involved a psychotherapeutic approach whose principal axioms were that offenders could be brought to recognise the causes of their aberrant behaviour through careful introspection, that they could be enabled to achieve greater clarity and insight and that they could achieve recognition of their ability to freely choose their actions. Casework, however, practiced as it was by non-medical officials, was eager to dissociate itself from psychotherapy proper, addressing the “social breakdown” of the client and, in so doing, restoring the client to proper social functioning (King 1958:50-51). This involved a “non-judgemental” approach in which the worker was careful not to criticise or condemn the client’s actions (Hollis 1955:41). Self-direction, the ability of the client to find his or her own path to freedom, underpinned the approach as it sought to facilitate “the client’s primary responsibility for his own affairs” (Hollis 1955:45). This was crucial, since coercion was seen as antithetical to the casework process and, in any case, “action based on knowledge is superior to blind obedience” (Hollis 1955: 49).

Casework lay “midway between therapy and education” (Hamilton quoted in Towle 1963: xii). Via the application of the casework method, the probation officer could lead the client to an appreciation of “the full significance of past experiences, parental attitudes and lack of satisfactions” enabling the client’s experiences to be reinscribed within a new discursive register in which he or she could make sense of their problems thus enabling the probation officer to help them “more positively and appropriately”(NAPO 1956:50). Enabling the client to gain adequate knowledge of the self, then, would lead to appropriate self-government.

By the 1950s, casework was ingrained firmly into practice. NAPO conference in 1956 acknowledged the need for the appropriate supervision of caseworkers to enable them to persist in their task (NAPO 1957)⁴⁷. Casework was both modern and a continuation of some of the practice of the early probation officers⁴⁸ but was characterised by “its recognition of emotional factors in the aetiology of delinquency and by the stress it lays on the worker/client relationship as a therapeutic tool”(NAPO 1957:98). The government of the offender, then, was now to be effected through the discovery of what *really* troubled him or her by enlisting the individual in the search for the causal factors which underlay their delinquent behaviour.

Where the missionary had been there for the offender as ‘friend’ to advise, comfort and counsel the individual in such a way that he/she was restored to the right path through an awakening of spirituality and a restoration of moral capacity, by 1946 the probation officer’s role to ‘assist, advise and befriend’ had been so codified that new probationers were be informed in a leaflet:

"The Probation Officer is your friend. Everything possible will be done to help you. It will be much easier for you to keep your promise if you tell the Probation Officer your troubles and take the advice given you" (quoted in Probation Jan-Feb 1946: 2).

The “promise” to reform, emergent from the old temperance pledge, was now given substance in an approach in which the offender, whilst construed as a free actor endowed with conscious volition, was still in need of work to be done to enable and facilitate the exercise of such volition. The probation officer’s skill was to understand the problem from the point of view of the probationer and then to use that understanding to help the client see it “as it really is and to move toward its solution” (NAPO 1957: 98). If the probation officer had operated since the nineteenth century, as providing-using Foucault’s(1980) term- a “regime of truth” for the courts (Minn 1946:167), articulating the problem in ways the offender could or would not be helped, now this regime of truth also employed the offender, enlisting her in the search for the truth of her problems whilst securing her agreement to take part in such practices of the self.

The incorporation and expansion of the precepts of psychology into the personalised relationship between probation officer and offender represented a new form of pastoral power, a power exercised through the relationship of caring established in supervision, a power which “cannot be exercised without knowing the insides of people’s minds, without exploring their

souls, without making them reveal their innermost secrets. *It implies a knowledge of the conscience and an ability to direct it*" (Foucault 1982: 214, emphasis added). In casework, people were not talked out of their "disturbed feelings" but rather "[t]hey get rid of them through expressing them and then, feeling relieved, they sometimes can listen to and use our reassuring interpretations" (Towle 1955 quoted in King 1958:60). Through such interpretations, probation officers could enable the client to see their offending as a mistaken attempt to solve their problems. The major impediment to the facilitation of such insight, however, lay in the fact that clients were often not aware of having any problem to begin with and were thus not seeking a solution. Authority, in addressing the unconscious dynamics of crime and delinquency was somewhat problematic: the enforcement of such a relationship (in terms of the nature of probation as an order of the court) could provoke problems of authority for both client and worker (King 1958: 72, 85). Casework, however, sought to reconcile the offender with authority so that "in a place where he has been judged he can now be accepted uncritically and without judgement" (Newton 1958:131)⁴⁹.

The expression of missionary concern for the 'fallen' gave way to the concern of citizen for citizen, a concern which casework ossified into a quasi-scientific relationship in which needs and problems were translated into an emotional register the landscape of which was contoured by the causes and precipitants of the presenting problems. By traversing this landscape in the company of an insightful guide, the client could come to recognise and follow, a new pathway free from the impediments of the past. The shape taken by the development of this necessary knowledge involved the question of learning to "harness the scientific mind in the service of the merciful heart" (Farmer 1946:51).

The faith in casework as a means of securing the rehabilitation of the offender marks out a highpoint of probation's optimism and self-confidence. Casework provided the point of convergence between the pragmatics of a humanist practice and the universals of scientific knowledge. It deployed a mild therapeutic approach toward individuals who might, at times, be unwilling 'patients' whose behaviour was to be neither condemned nor condoned (Schmidberg 1958)⁵⁰. Social work occurred across a diversity of sites differentiated only by their focus upon seemingly arbitrary particular client groups, since the "process of helping people to solve their problems does not differ fundamentally between one agency and another" (NAPO 1956:49). As a branch of social work, then, Probation was an instance of a more generalised expertise⁵¹ with a specific focus upon the socially inadequate individual although, within the rationality of welfarism, it was "almost a matter of chance" as to which agency dealt with troubled individuals, given this universal nature of the causes of such problems (Younghusband 1954:213).

The Welfarist Conception of the Offender

It would be as well here, to sketch out the implications of the emergent welfarist model of the offender which emerged in probation during and after the Second World War. A major point to be made is that as a means of *treating* offenders, casework was almost entirely detached from 'classical' notions of punishment, deterrence and retribution. Indeed, it was "fundamentally wrong to mete out punishment as a deterrent" to young offenders and such treatment was likely to outrage the young person's sense of justice (Ziegler 1951:203)⁵². Casework was characterised by its direct concern for the individual, and was emphatically "not primarily an organ of social control", but was designed to bring the individual into conformity with society "and thus rid it of the social hazard presented by the discontented, unsatisfied, rebellious individual" (Hollis 1964:12). And yet, probation had emerged as an institution primarily dedicated to such an aim, namely a concern with "the reformation of the offender and with changing an antisocial attitude or pattern of behaviour into something more acceptable to the community" (Clifford 1954:120).

A major casework text described how clients need casework because "there has been a breakdown in their social adjustment" (Hollis 1964:20)⁵³. This conception of the failure of certain individuals to adapt to the pressures of the modern world was a salient concept in understanding behaviours after the war. "Maladjustment" was a term which had been in currency since the 1920s, but, following the Second World War, it became a major surface of emergence for new approaches and techniques⁵⁴. The rendering of such "maladjustment" into a tangible form made clear the linked and relational nature of social problems: "child delinquency is not a normal, but a social problem...[d]elinquency has not a specific character..[it] is an accident which by its anti-social character has attracted attention upon a child or adolescent" (Heuyer 1949:258).

The forms maladjustment took were many and varied and the relationship between maladjustment, delinquency and crime was complex and non-linear – "delinquency cannot be equated with maladjustment"⁵⁵ (Ministry of Education 1955:para 348). The Report of Ministry of Education's Committee on maladjustment drew out these complexities:

Maladjustment is not a medical term...nor is it the same as a deviation from the normal...it is a term describing an individual's relation at a particular time to the people and circumstances which make up his environment. In our view, a child may be regarded as maladjusted who is developing in ways that have a bad effect on himself and his fellows and cannot without help be remedied by his parents, teachers and the other adults in contact with him. (Ministry of Education 1955: para 90)

Maladjusted children were insecure and unhappy and failed in their personal relationships, and, importantly, "*they are not capable of improvement by ordinary discipline*" (Ministry of Education 1955: para 90, emphasis added). The causes of such maladjustment could be a set of events or hereditary factors – it was hard to generalise. Clusters of problems could stand in a reversible causal relation to maladjustment: asthma, speech defects, enuresis and so

forth, all could be “either the cause or the effect of maladjustment” (Ministry of Education 1955: para 95). The manifestation of maladjustment at the manifest level was detectable in “nervous disorders” such as habit disorders, behaviour disorders, organic disorders, psychotic behaviour and educational and vocational difficulties rendering the individual socially inadequate in terms of adhering to norms of economic activity, affective relationships and conformist social participation. This continuum of problems represented ways of effecting relief from fears and insecurities and which might be found in retreatist behaviour, physical symptoms and, in the case of behaviour disorders, “a revolt against authority” (Ministry of Education 1955: para 98). It was at the level of the potentially or the actually maladjusted individual, that intervention took place, an intervention oriented toward a readjustment of that individual in his or her relationship with society. Maladjustment acted as an index of the disparate causes of social and economic inadequacy, an index in which bedwetting was as much a cause for concern as overt delinquency (Michaels and Steinberg, 1952)⁵⁶. Since even the apparently trivial and unrelated behaviour might— to the trained eye— index future delinquent behaviour, interest grew in harnessing more innocuous behaviours into predictors of more serious, law-breaking future behaviour (Stott 1960)⁵⁷.

The 1960s and 1970s

Probation continued through the 1950s and 1960s with its application of social casework. The utopian self-confidence of the service in casework began to fray a little, particular with regard to the notion that material need was either abolished within the welfarist state or was being dealt with elsewhere with the ‘rediscovery of poverty’ in the 1960s. There was also a tension between the authority vested in the probation officer’s role and the need to maintain a non-judgemental stance toward the client. This tension tended to be left to the individual officer to resolve as best she could (Newton 1958:126). By 1963, for example, an article in *Probation* questioned whether there was too easy an acceptance of the causal relationship between early childhood experiences, family relationships and offending, noting also that “the majority of our cases come from certain areas, not only probation but nearly all social problems, matrimonial, illegitimacy, vandalism, casual employment, unemployment and over-crowding to name but some..” (Keidan 1963:71). The author continued this critique, wondering whether probation should not break free of “fossilised techniques” and try to ensure that its clients “really receive the help that society has promised them” (Keidan 1963:72). This was not just a critique of probation but of welfarism as a whole. Other criticism begins to emerge in probation discourse during the 1960s, criticising probation officers’ actions as “amateur psychiatrists” (Emerson and Lewis 1964:182), the questionable epistemological status of casework (Farrimond 1965:9), and the use of probation for petty first offenders (Walker 1966:12).

The activities and practices of probation officers were, then, increasingly subject to critique by practitioners themselves. However, within the wider organisation of criminal justice saw no such problems. In parallel with the growing critique of casework as an individualising technique that neglected the social and structural dimensions and contexts of offending, the probation service was expanding, taking on more staff and more responsibilities that crossed the boundary of social activity into the prison. The service gradually moved into a closer relationship with the prison, absorbing after-care and taking on parole following the 1967 Criminal Justice Act (Bochel 1976; King 1969). Whilst the political rationality of welfarism ostensibly remained intact, the optimism in science and expertise to effect progress was slowly losing some of its force, such that its rhetoric remained vibrant and buoyant whilst “the essential ambiguities, tensions and uncertainties which lay at the core of its operation remained unchanged” (Parton 1994:20).

‘Ambivalent Authority’ 1970-1984

By the early 1970s, then, probation was operating in an environment in which the rationality of welfarism was increasingly under question from various political perspectives. The impact of prison-based work, community service and a radical critique based on Marxist theory, all formed a heady brew within the discourse of probation, challenging, reframing and problematising the buoyant self-confidence displayed in the 1950s and early 1960s and exemplified by the casework method’s assumption of diagnostic expertise. It is possible to identify three tendencies or trends which contributed to a move away from the ‘treatment’ assumptions of casework. These tendencies provided a disparate orientation toward work with offenders creating for probation officers, an *ambivalence of authority* which saw a weakening of the post-war confidence in the quasi-medical approach of casework⁵⁸. These three broad tendencies are discussed in the following section and may be analytically depicted as follows:

- The incorporation of external Criminal Justice objectives following the adoption of after-care, parole, prison welfare work, community service and alternatives to custody.
- The various tensions within social work which problematised the dichotomy between pastoral and disciplinary modes of working – in the language of the time, “care” and “control”. For some these roles could be articulated simultaneously without compromising the essential social work base of probation work whilst for others, the service was compromised by its official status which undermined its social work role.
- The development of a radical critique founded upon a Marxist radical sociology and which the role and legitimacy of authority in capitalist society *per se* and similarly, of the probation service.

Although offering a dispersed series of sites and discursive positions from which to develop a perspective on probation practice, these three positions also shared a common assumption: a rejection of the assumption of prioritised knowledge accorded to casework.

Since the 1960s, there had been growing recognition that the growth of work connected to the prison and the gradual erosion of the more obviously social work elements of probation work with juveniles had major implications for the work of probation officers with the growth of work with more serious adult offenders paralleled by a diminution of work with juveniles – a phenomenon exacerbated by the 1969 Children and Young Persons Act (Noble 1966:37-38). The Younger Report in 1974, with its suggestion for supervision and control orders as well as the use by probation officers of pre-emptive detention, signalled the tenor of a new rationality in which punishment played a more prominent role (Advisory Council on the Penal System 1974).

The *purpose* of probation was also becoming problematised. Since the late nineteenth century, the use of the caring individual to deal with the personal inadequacies and failings of offenders – to seek their welfare and restore them to social competence- had been so resonant with the wider political project of welfarism as to render probation almost invisible to critique or political problematisation. The introduction of community service introduced a new disciplinary rationality into the heart of the probation service. Whereas the treatment model, with its adherence to a model of social and individual pathology had sought to effect a “cure” such that the offender was reintegrated into society through the development of social competence, community service introduced conceptions of deterrence, retribution and punishment (Oldfield 1994).

Similarly, the development of “alternatives to custody” and the need to offer diversionary programmes to sentencers created an explicit focus on the ability of probation to match the prison in terms of punitive content. In effect, probation began to try to compare itself to the prison, rather than maintaining its previous, critical distance from punishment *per se*. Once this convergence with the prison began, the service became locked into a constant internal tension since it was attempting to offer something *different* to prison but which basically enacted a similar function. Attempts to recreate the discipline and formality of the prison in the community were, in practice, both unpopular and unsuccessful, as evidenced by the Kent Control Unit which sought to subject offenders to a rigid, prison-like surveillance and discipline within a community based setting (Kent Probation and After-Care Service 1981; Murray 1986; Spencer and Edwards 1986).

Whereas comparison with prison suggested a more punitive approach, the growth of generic social work as the knowledge base of probation sought to define the social work role of the service. This involved either an argument that the care and control aspects of the service were incompatible and should therefore be separated (Harris 1977; 1980) or an attempt to reconcile the two functions within an approach that maximised the social work element whilst acknowledging the authoritarian elements of the work (Bryant *et al* 1978; Bottoms and McWilliams 1979). For Harris, compulsory supervision, having been shown by research evidence to have negligible impact upon offending, merely hampered the professional activities

of the trained social worker, as did the ability of the “non-social worker” magistrate to control the probation officer’s access to offenders (Harris 1977). It thus followed that the social worker as probation officer should be free to carry out this work whilst the punitive side could be parcelled out to others (Harris 1980).

On the other hand, there were arguments that saw care and control as – at least to some extent – reconcilable. For Bryant and colleagues, the two could be articulated in such a way that basic demands for regular reporting could be made with the opportunity for clients to request social work assistance should they deem it necessary – thus fulfilling the legal requirements of supervision whilst avoiding the treatment model of being “sentenced to social work” and thus giving the probation order credibility with both sentencers and probation officers (Bryant *et al* 1978:114). In a similar vein, Bottoms and McWilliams argued for a “non-treatment” paradigm in which the diagnosis and treatment of need became translated from an expert activity to one based upon consultation, negotiation and joint definition of the problem or problems to be addressed (Bottoms and McWilliams 1979). The overall stress here was upon a more open dialogue with offenders than had been possible in the expert-client relation which obtained under the treatment model. By an open engagement with the client, the consensualism of the welfare state was both invoked and applied. In practice, however, officers tended to fluctuate between treatment and non-treatment approaches, depending upon the contingencies of a particular case (Hardiker 1977).

Additionally, critiques of probation practice began to incorporate the growing influence of Marxist-oriented radical sociology in academe. Critiques of the role of social work (Brake and Bailey 1975; Pearson 1975; Corrigan and Leonard 1978), the criminal justice system and its conceptualisation of crime (Taylor, Walton and Young 1973; 1975), the role of the state in authoring moral panics (Hall *et al* 1978) and a more specific critique of probation under capitalism (Walker and Beaumont 1981) all contributed to a complex image of probation in which authority at both macro and micro levels was regarded as a part of the mystification effected by a dominant state in order to mask the exploitative operations of power. Feminist critique also began to highlight how the gendered nature of probation work replicated wider asymmetries of power in society and served to reinforce patriarchal values and roles (Carlen and Worrall 1992; Worrall 1990; Eaton 1986; Dominelli 1982).

These various problematisations of the tasks, role and legitimacy of probation practice, can be seen as – however unintentionally- contributing support to a new political rationality, one of *neo-liberalism*, in which the problems and solutions constituted and addressed by welfarist discourse were discredited or disavowed as representing part of the problem of government rather than its solution in the late twentieth century. Whilst the radical critique was not aimed at bolstering the political discourse of rightwing politicians, that was the overall effect (Garland 2001). A growing conception of the individual which emphasised particular capacities for *choice*

began to inform the restructuring of public service and to invest the discourse of government. Rights now shifted from the universal rights of citizenship under welfarism to the right to choose: the autonomy of the individual to select from a range of products became sacrosanct. The conception of the “enterprising individual” provided a model of the rational consumer (Rose 1996b; 1993). New technologies of security began to emerge, linking personal desires and goals to social order in a new way that was shorn of much of the baggage of welfarism.

Aligned to the emergence of neo-Liberal political discourse was the emergence of a new governmental rationality of risk. In contrast to the welfarist conception of risk, in which the sharing of risk through assuential methods created social rights and responsibilities for citizens (Ewald 1991), the late *twentieth* century rationality of risk reflects a conception of society in which the harms and hazards embedded in the topography of social life are formulated within a new problematic. This problematic constructs the potential dangers of daily life not as problems to be addressed through the programmes and projects of the progressive state, but in terms of obstacles to self-fulfilment and personal well being (Garland 1996; 1999; Dean 1999 Rose 1996, 1998).

Probation in the 1990s: Evidence, Effectiveness and Enforcement

In the late *twentieth* century, this rationality of risk has shaped new conceptions of crime and criminals that have radically impacted upon various aspects of criminal justice. This new rationality has seen the increasing salience of the model of the ‘Reasoning Criminal’, the individual as a goal oriented calculator, oriented toward offending through a calculation of the pros and cons of a particular criminal endeavour (Cornish and Clarke 1986). Conceiving crime as risk avoids the much of the individualised causal theorising- and thus the need for the ameliorative projects- of welfarism⁵⁹. The ‘responsible citizen’ of the 1990s has a *duty* to watch out for the risks and hazards of crime: to lock doors, to ensure an adequate standard of residential security (through the use of deadlocks, burglar alarms and so forth); to keep an eye open for criminal activity (for instance by joining neighbourhood watch) and to orient one’s comportment in public toward the apprehension and avoidance of risky situations (O’Malley 1992). Crime, then, is increasingly construed within a neo-liberal discourse in which crime is a problem caused by the criminal choices of individuals rather than a pathological aspect of capitalist society whose impact is felt by both the social body and the individual offender herself –thus requiring integrative solutions to the underlying problems. Crime in the late *twentieth* century is ‘normal’ – high levels of crime are accepted rather than taken as indices of social pathology (Garland 1996). Prudent citizens avoid or resist the temptations of criminal opportunity presented in day to day life whilst others give in to these opportunities. Crime itself becomes a function of the choices, decisions and opportunities extant in the individual’s life, often incorporated into the routine daily activities of an offender’s life (Felson 1998).

In probation, this new problematic of crime has seen a shift toward a risk-oriented pattern of service delivery (Feeley and Simon 1992). Models of risk assessment have been set out in widely distributed training manuals (Home Office 1997) and have also been developed using “What Works” principles (Kemshall 1998). By the judicious use of risk assessment and case management techniques it is possible to assign offenders to various interventive regimes which reflect Foucauldian models of power: *pastoral* interventions may offer some form of therapeutic input, *disciplinary* modes of intervention may involve community service and training or retraining the individual in the rhythms of work whilst *sovereign* interventions utilise imprisonment to contain and restrict the offender, displaying the power of the law to respond to offences so serious as to entail a loss of liberty. As always, in invoking such models, it is necessary to point out that there is a considerable degree of overlap between these modes of intervention – for example combination orders may combine some of the pastoral approaches of probation supervision with the disciplinary requirements of community service. The governance of offenders’ conduct, then, may incorporate one or more elements from this series of approaches⁶⁰.

Throughout the 1990s, the growing “What Works” research findings have been incorporated in the growth of a new governmental rationality exercised from the centre in which the activities of practitioners are increasingly controlled via mechanisms of inspection and audit. The Home Office began to develop the results of meta-analytic research such as that of Andrews *et al* (1990) and Lipsey (1992) into a series of prescriptions for probation practice in which good practice is equated with conformity to centralised prescriptions and rules rather than relying on the autonomous professional judgement which characterised welfarist expertise. The codification of criteria for successful probation interventions based upon a menu-style identification of the characteristics of successful programmes has seen the Home Office begin to use these as governmental texts, setting out templates for practice which delineate the parameters of what are now considered acceptable ways of working. (Her Majesty’s Inspectorate of Probation 1998; Hough and Chapman 1998). Interestingly, alongside the promotion of methods based around cognitive behavioural therapy, exists another discourse of *enforcement*, with the reduction of the discretion of probation officers in taking breach action and a minimum allowance of one unacceptable absence before such action is taken (Home Office 2000).

Probation practice as expertise is accordingly now being subsumed within a governmental rationality *external* to the discourse of its practitioners. As Dean (1999) argues, neo-liberal government folds in upon the technologies of government, reasserting sovereignty over the apparatus of the social, setting out the methods, approaches and techniques by which probation is to be both understood and practiced. Nor is such knowledge subject to a wider, independent critique: competition by academic institutions for growing probation research funds place such institutions in competition with staff within those services and threaten to

compromise notions of academic independence in contributing to knowledge and practice (Celnick 1997). Perhaps the creation of Accreditation Criteria for probation programmes, to be approved and defined by a panel of expert consultants paid on a *per diem* basis, best exemplifies the shifting allocation of status and expertise within the probation-central government nexus (Mair 2000). In such an approach, the “government of government” seeks to control and constrain the autonomy formally allocated to the practitioners of expert agencies such as probation. The rationality for the changing shape of probation practice is expressed in one of the Home Office handbooks:

The demands for greater public sector *accountability* have combined with the imperatives within the criminal justice system for *effective* and thus *credible* alternatives to imprisonment. To protect the public and gain their support and confidence, probation services have to do several things:

- ensure that the existing knowledge base about effective practice is comprehensively applied.
- extend this knowledge base.
- develop management systems for maximising effectiveness.

If probation services do not perform effectively, they will be unable to justify their public funding and ultimately their existence.

(Chapman and Hough 1998, para 1.8)

The rationale for probation practice is thus shifted away from the exercise of expert authority and becomes entwined with the need for justification and the achievement of credibility in the eyes of “the public,” although it is by no means clear how this public is to articulate its approval or otherwise of particular aspects of probation work. What is clear is that central government distances itself from the probation service whilst simultaneously increasing its control over it, mapping out its expectations and requirements as a ‘customer’ of the service. This effects a distancing from one of the mechanisms of welfarist government and positions the probation service, to some extent, within a market relationship with central government, with the suggestion that its services might be supplanted by other agencies should it fail to deliver.

The Elements Of Probation Practice In The Late 1990s

In terms of practice, then, a newer, more formulaic approach has evolved. Predicated upon the findings of the “what works” research, cognitive behavioural programmes aim to address the faulty or distorted cognitions that sustain offenders’ criminal and anti-social behaviour. By the development of new skills and capacities for critical and rational reasoning, offenders are to be equipped to manage those aspects of social life to which they tend to respond with criminal behaviour (Andrews and Bonta 1996; Ross and Fabiano 1985). Walters (1990) depicts typical patterns of cognitions that enable and sustain the criminal and anti-social behaviour of serious persistent offenders as comprising a ‘criminal lifestyle’. Such cognitions tend to be “...subjective, poorly organized, and geared toward immediate gratification at the

expense of long-term success and satisfaction” (Walters 1990:155). The overall objective of such interventions, then, is to develop a “responsible subject” imbued with the dispositions, capacities and skills to effectively negotiate risky events and situations thus avoiding further offending. In engaging with such “practices of the self,” the offender is encouraged to develop the outlook of neo-liberalism’s preferred subject – the rational choice actor (O’Malley 1996: 197).

The allocation of offenders to interventions is also construed within a rationality of risk assessment and case management which marks a shift from the welfarist approach. Risk is now a property to be assigned to individuals according to the extent to which they meet certain criteria set by calculative technologies which predict their future risk of recidivism. Indeed, the “risk principle” has become a major organising principle in the allocation of services (Andrews and Bonta 1994; Andrews, Bonta and Hoge 1990). This axiom holds that the level and intensity of intervention should be proportionate to the level of risk posed by the offender, Andrews *et al* argue that this principle holds to the extent that exposing low risk offenders to higher intensity interventions may actually increase the low risk group’s chance of reoffending⁶¹.

Probation at the Millennium

It is clear from the above description of the shifts in probation practice in the 1990s that new models of probation have emerged to supplant those of the welfarist model. This rationality may be seen as linked to the conception of “reflexive government,” an approach to social management which is structured around the tenets of neo-liberal discourse. Whilst under the welfarist model the offender was understood within a pathological discourse which informed attempts at social reclamation and rehabilitation, the new neo-liberal model is based around an educative, skills-based approach which seeks to inculcate the skills and capacities of the neo-liberal subject. The role of expertise in delivering such services, however, is infinitely more qualified than under the welfarist model. If, under welfarism, the government of the conduct of the offender had been enacted via probation as a *mechanism of government*, reflexive government sees the key to affecting the offender’s conduct as being the government of that governmental mechanism itself:

The imperative of reflexive government is to render governmental institutions and mechanisms, including those of the social itself, efficient, accountable, transparent and democratic by the employment of technologies of performance such as the various forms of auditing and the financial instruments of accounting... (Dean 1999:193)

Welfarism, then, allocated responsibility for the management and change of the offender to the *expert individual*. The basic instrument of change was the probation officer him/herself, operating with a loose autonomy within the parameters set by professional training and knowledge. Within late modernity, neo-liberal government-by-audit allocates the capacity for effecting change to a series of technical approaches, utilising calculative technologies to

ascertain levels of risk and predicated upon the knowledge base of external expertise. Through the systematic application of particular structured, codified and formulaic programmes for change significant reductions in recidivism are now thought to be possible. In late modernity, it is the probation officer whose conduct is to be governed as well as that of the offender.

The depiction of the shifting epistemic ground of probation should not, however, blur some important continuities. Perhaps the most important is the prolongation of a conception of the *inadequate offender*. In the Victorian era, the missionary was concerned with the personal inadequacy of the 'fallen,' those individuals who had strayed from the honest path but who might be restored to respectable living through Christian fellowship and material assistance. During the welfarist *twentieth* century, the process of salvation became inextricably entwined with notions of citizenship. The offender, understood as inadequately equipped to exercise the role of citizenship, was nonetheless entitled to the assistance of the probation officer as a right - like it or not. By addressing the underlying problems which contributed to criminal behaviour, the probation officer restored the individual to the social realm, able to participate in social and economic life. In contrast, in the late *twentieth* century, probation is now engaged in a process of risk management in which the appropriate means of dealing with many offenders is understood to be a form of empowerment or enskilling aimed at providing the ability to negotiate the complex landscape of choice which traverses social life at the end of the century. New forms of conceiving the social realm and its government shape the practices of probation at the start of the twentieth century. Whilst the continuity of offenders as in some form 'inadequate' allows a long term perspective in which probation's role is seen as effecting management and change ('government') of offenders' behaviour, the changing conceptions of *why* people offend and *what* is the appropriate response to such offending, mark a transition which may affect not just the patterns and practices of probation but which may also have far-reaching effects in terms of justice and equality. In order to study the ways in which probation discourse incorporates elements of the neo-liberal political rationality, I now turn to one specific instance, that of *social inquiry* - the way in which probation officers have, since the late nineteenth century, given a certain 'visibility' to offenders through their representation in reports for the criminal courts.

4 Social Enquiry: Translation, Representation and Governance

As I have discussed above, within the political rationality of the welfarist society that emerged towards the end of the nineteenth century, government became a governmental ‘art’ informed by a welfarist rationality. This welfarist governmental approach operated through a diffuse and differentiated series of activities in which were established certain divisions of authority and appropriate modes of intervention into various aspects of human life. Political problematisations, then, were, under welfarism, effected through apparently autonomous and independent agencies and institutions whose motivations were those of the achievement of a beneficial and ameliorative result for both individuals and society. The end results of such interventions were concerned with effecting a certain normalisation: the alignment of individual subjectivity “with aims, goals, objectives and principles established in political discourse or political programmes” (Rose 1993: 287). However, prior to such governance of some realm of social life, it is necessary to be able to render reality into information, to simplify and codify it by processes which enable the “inscription of reality in a form where it can be debated and diagnosed” (Miller and Rose 1993: 81).

In order to intervene in a particular sphere of social life, then, it is necessary to *problematise* that sphere, to render it into the terms, concepts and logics of a particular rationality. By such a translation of reality into technical terms, the area of social life in question is inscribed into a technical register and is thus made comprehensible and manageable within the terms of that register (Foucault 1986: 226).

This inscription of the processes and circumstances of everyday life, labour and affective relationships has, within the ambit of the probation service, been effected through the process of *social inquiry* – the search for the causes, correlates and circumstances of offending – and its representation within a logic that links antecedent social and affective relationships in such a way as to identify the causal dynamics of the problematised behaviour and to set out both diagnosis and prognosis for the court in order to enable that court to make an appropriate sentence.

This chapter examines the development of the techniques of social inquiry within probation and sets out these techniques and practices against the backdrop of welfarist society and against the emergence of neo-liberal government. The first sections set out the development of the formalised social inquiry as it moves from the expressed opinion of a moral authority through to the codified inscription of expert authority. The second part of the chapter focuses upon the relationship between the activity and social inquiry and the exercise of power, creating certain problematics pertaining to the impact of social inquiry upon the individual who is both

subject and object of that inquiry. The impact of welfarist social inquiry is then discussed in terms of its creation of a certain discursive mode or narrative form of understanding the offender and this is juxtaposed with that of the Pre-Sentence Reports which superseded the SIR as a result of the 1991 Criminal Justice Act and which, arguably, represent a neo-liberal reformulation of the welfarist technique of social inquiry for the courts.

The Role and Function of Social Inquiry

Probation reports are generated within a 'regime of truth' and act as 'inscription devices' through which the ubiquitous and mundane details of life provide a surface upon which to map an understanding of the life of a particular individual (Foucault 1980; Miller and Rose 1992). Such details are translated into a register in which the indicators, correlates and causes of deviance are condensed into a synoptic biography in which the purpose of the document is to inform the sentencing decision. The standardised interview and construction of the report takes the form of what Foucault refers to as the 'Examination' in which the probation officer brings to bear upon offenders a 'normalising gaze, a surveillance that makes it possible to qualify, to classify and to punish...a visibility through which one differentiates them and judges them' (Foucault, 1977: 184).

This recording of the life of the everyday person marks a 'reversal in the political axis of individualisation': where once only those at the top of the social hierarchy had been thought worthy of the creation of a permanent record of their activities, now those at the lower end of the social spectrum – those who had previously been invisible to inspection and knowledge-find themselves recorded and documented within the growing bureaucracies of welfare. Through these governmental technologies the individual is "formalised within power relations", becoming a "case", a collection of statements, opinions, diagnoses, facts, speculations, ruminations and calculations (Foucault, 1977: 190-192). And, by means of this documentation of the problematised individual, that person is opened up to the exercise of power, with progress recorded or denied, appointments documented, referrals to other specialists agencies arranged and monitored, responses to questioning evaluated and so forth.

The history of the social inquiry is one of the formalisation of both its role and routines of inquiry. Beginning with the authoritative figure of the missionary, the truth of the report was predicated upon the reliability of his or her word as guaranteed by social status and vocational commitment. The frequent use made of the missionaries during the court's working day, as noted by the Church of England Temperance Society in 1889, led to an increasing reliance upon their judgement in deciding upon an appropriate sentence (Heason 1962:181). This reliance rapidly expanded in scope: once the process of providing inquiries for magistrates about habitual drunken offenders had begun, the work soon opened out to take in other types of offenders (Potter 1927: 9).

With the growth of the welfarist state, the adoption of the missions for use as a national probation system was accompanied by a shift in the nature of the authority allocated to the probation officer. The probation officer acted, as had the missionary previously, as an authoritative figure within the court apparatus, given respect and status by virtue of his/her vocation, commitment, moral character and overall rectitude. Initially, then, the role of the probation officer was that of the philanthropist whose position was both an outcome and function of personal attributes. Following the 1907 Act, however, these attributes were reinforced by the backing and sanctions of the legal system, reframing the old philanthropic relationship between the deserving and the donating into a more formal, impersonally based association predicated upon the expert status of the probation officer. The emergence of various strands of welfarism during the first decade of the *twentieth* century, saw the old associations with ad hoc philanthropy being jettisoned in favour of mechanisms linked to the liberal social democratic model of governance in which individuals were not assisted through the linking of personal misfortune to the beneficence of more fortunate others but rather were given help by virtue of their status as citizens (Attlee 1920). From a model of authority based upon personal worth, the probation officer moved to one in which authority was invested in the individual by virtue of *official status*, that is to say, a status conferred by training and experience, the possession of accredited and authorised knowledge, a status of expertise.

The Welfarist Nature Of Social Inquiry

The history of the SIR is, as I have noted above, one of the formalisation of the reporting process. The Social Inquiry was a technology saturated in the precepts and assumptions of welfarism. Ayscough noted that, when “mercy seasons justice” – as enabled through the use of the missionaries- it was the state which gained as well as the offender (Ayscough 1923: 11). The report embodied an adherence to causal logics of individual behaviour, a foundation in social pathology, an eschewal of surface appearance for deeper meaning, in which the symbolic transgression of the law was no longer substantial enough to inform effective and efficient sentencing (McWilliams 1986; Foucault 1988c). With the absorption of psychological vocabularies and logics, probation discourse was enabled to weave present acts of deviance with the obscure minutiae of developmental and experiential history into an explanatory causal narrative that identified a continuum of deviance in which the slight and trivial were reframed as both homologous with, and possibly contributory to, more serious anti-social behaviours. Within such a discourse, probation knowledge was able to overlap and intersect with similar discourses employed within the child guidance clinic, the hospital and the reformatory. The report existed at a site of a confluence of moral, social and individual discourses, each of which took as a central concern issues of order and appropriate comportment.

The social inquiry report, then, rationalised offending within the logics of a causal biography in which experience, environment and affective relations all came to play a part in depicting the nature of the problem and suggesting its possible solution. In doing so, the SIR formed a forensic document which introduced information which would have been inadmissible in court if offered as evidence: the report was not bound by hearsay, for example, and the probation officer's opinion of the likelihood of the offender's success or otherwise if placed on probation was taken, to a large degree, as an objective statement. This standardised, formal synoptic representation of the offender's life, then, was predicated upon authority and expertise. As we have seen above, the knowledge through which the offender was problematised and discussed changed from a discourse in which insight was drawn from moral probity and religious conviction to a psychologically informed discourse. Yet the actual model of the individual – a being capable of self-transformation through the application of influence, advice and admonition- was so similar that the former easily absorbed, and was replaced by, the latter.

Early Inquiries

The earliest inquiries were made by the missionaries in the court waiting room and in the cells of the Police Courts (Holmes 1901; Le Mesurier 1935; King 1958). The moral force of the inquiries was underpinned by the religious vocation and moral character of the missionary and represented the application of existing philanthropic techniques of inquiry, particularly those of the Charity Organisation Society. These early reports, made verbally and occasionally delivered to the magistrates at lunch, seem to have operated on the traditional philanthropic distinction between the 'deserving' and 'undeserving' poor, substituting the desert for alms and charitable relief for an evaluation of the extent to which the offender merited an expression of clemency from the court. Such reports depended upon the missionary's moral evaluation and personal appraisal of the case. So, for instance, offenders who demonstrated over-familiarity with the court system, in particular the First Offenders Act, were given short shrift according to Holmes (1901: 326).

The 1907 Act saw the "fitting of assistancial practices into the judicial framework" (Donzelot 1980: 119). Although the same precepts and assumptions of moral probity and worth were still assigned to the missionaries, there was an increasing tendency to construe the effects of this moral authority within a more technical discourse. The use of probation was increasingly seen as best effected after suitable inquiry so that the magistrate should be fully informed as to "his private character, domestic surroundings, employment record, associates and habits" much more information than would otherwise be available during a brief police court hearing (Leeson 1914: 67). These inquiries covered domestic, social and economic life:

The preliminary inquiry consists of interviews with the offender, investigations of home conditions, consideration of school records in the case of children, and of employment records in the case of adults. The inquiry will show, also, what neighbourhood influences may assist

or retard future good conduct, and particularly, what social or religious agencies could be called on to co-operate in the offender's reclamation (Leeson 1914: 69).

Leeson also notes that a questionnaire might be useful for homes of a "lower type" in order to procure answers that would be more readily forthcoming in "good homes" (Leeson 1914: 69). Such a questionnaire would address previous criminal record, the offence, the offender's habits, his or her physical and mental condition, home circumstances, education, employment and membership of religious and social organisations (Leeson 1914: 71-74). By the end of the inquiry, the probation officer would be better placed to know whether the offender was "unmistakably and fixedly depraved", whether he or she afforded "reasonable promise" of becoming a law-abiding citizen and whether, if the answer to the last question was negative, could such changes "be effected through the agency of probation, as to make it reasonably probable that he will become law-abiding" (Leeson 1914: 74).

1907 and After

The Departmental Committee which reported on the first year of the operation of the probation service noted that magistrates made use of the missionaries reports to gain information about the "character and surroundings of a person charged, before the case comes forward for decision" (Home Office 1910a: para 5). These reports were received as offering empirical evidence to the magistrate not just of the antecedent and moral circumstances of the case but also in terms of providing ongoing information as to the success of the disposal: "[t]he reports furnished by the probation officer inform him of the results, in practice, of his action; he can tell whether his clemency has been justified or not. He gathers material to aid him in further cases" (Home Office 1910a: para 5).

There were some concerns during the initial stages of the operation of this new 'national' service that the inquiry work of the probation officer would compromise or contaminate both the due process of law and the relationship that would obtain with an offender should a probation order be made. The status of the information also differed between courts with some courts taking the information in a relatively informal manner and others swearing the officer in (Home Office 1910b: minutes 2343, 2415, 3088). Much probation work focused upon juveniles, with reports conveying a moral evaluation of the individual in order to gauge the likely response to the effect of probation supervision. Miss Blyth, Probation Officer for the Tower Bridge Court, gives such an example in her evaluation of one young offender in 1916:

"During his years on probation he changed his work 4 times. There was nothing said against him except that he was 'no good'he was not a very satisfactory boy, shifty and sometimes untruthful" (Inner London Probation Service Archive 1916).

During the 1920s and 1930s, the moral model of the offender utilised by the missionaries began to incorporate the concepts and logics of psychology⁶². There was an

attraction to the apparently objective and scientific knowledge of the human condition afforded by psychology, particularly since it enhanced the approaches of friendship and sympathy that formed the vehicle of social work: “to sympathise one must understand, and to understand, one must know” (Attlee 1920: 129). As noted in the previous chapter, the moral model of the autonomous individual able to attain salvation largely through his or her own enterprise and endeavour with the assistance of the authority of the missionary, provided a template roughly homologous to that of psychology, making the slow and complex transition from a moral evaluation to a scientific one, effecting, as Castel puts it: “a slow preceding evolution of practices which, at a certain moment, passes a threshold and takes on the character of a mutation” (Castel 1991: 281). For a time, then, psychology and religion existed within the same discourse, both informing the conception of the offender and the need for certain modes of ‘treatment’ without any overt tensions between the two.

From the late 1920s, the new NAPO journal *‘Probation’* regularly carried articles by psychologists and psychiatrists. Issue number one contained ‘The Unconscious Motive of the Juvenile Delinquent’ by Dr Crichton-Miller of the Tavistock Clinic which expressed a model for understanding criminal behaviour that would last until the late 1960s, with crime providing “an example of what we call unconscious motive which can work itself out in all sorts of anti-social conduct in a most unexpected manner” (Crichton-Miller 1929: 12). Indeed, the probation officer’s role in preparing his or her social inquiries came to be seen as analogous to that of medicine, offering to the court the services of “some sort of spiritual doctor” (Lieck 1935: 161). Foucault’s term a “therapeutic clergy”, serves well as an indicator of the condensation of moral and scientific discourse around the probation officer and her work (Foucault 1973).

Formalising the Social Inquiry

The publication in the mid 1930s of the new *Handbook of Probation* began a process of codifying the task of social inquiry. The handbook differentiated between the act of inquiry and subsequent supervision and the “kindred social work of the courts” – mainly conciliatory and matrimonial work which it described as “missionary work” (Le Mesurier 1935: 52). Noting that the investigative role of the probation officer had both positive and negative aspects, the handbook remarked that such inquiry

goes far to determine, by a process of elimination, what is or is not a suitable probation case, and, on the other hand, when careful enquiries have led to a decision on this point, it provides the information without which the wise handling of the probationer will not be possible (Le Mesurier 1935: 54).

Once more, the notion of the probation officer as, to use Foucault’s (1973) term, a member of a “therapeutic clergy” is invoked since, without a social inquiry “the enquirer is working at the level of the medical practitioner who should, without examination and the use of a stethoscope or thermometer, prescribe a course of treatment on a mere statement of symptoms which a patient

and his relations believe themselves to have observed” (Le Mesurier 1935: 88). This diagnostic process enabled the magistrate to obtain a detailed picture of the offender, to

“know something of his personality and relation to society, to consider his needs and potentialities, and thus be in a position to decide whether in his interests, and the interests of the community it is expedient to place him on probation, or whether some other form of treatment is necessary” (Le Mesurier 1935: 89).

The information to be collected by the probation officer, the handbook continued, was normally based around two themes: external and internal influences on the offender’s life (Le Mesurier 1935:89). The investigating officer needed to study the offender’s environment – encompassing home, family relations, neighbourhood, school, employment, recreation and activities and membership of social and religious organisations (in fact, most of the factors set out in Leeson’s (1914) questionnaire and mentioned above). The information thus produced would enable the officer to ascertain the extent of “adjustment or maladjustment” and the extent to which these might be “capable of remedy by certain methods” (Le Mesurier 1935: 90).

Also of interest in the *handbook* is the mention of the utility of psychology and the acceptance that psychological discourse offered the ultimate explanatory vehicle for a particular offender:

In an ideal organization of probation the services of a trained medical psychologist would be available, and then much of the information grouped under ‘personal history might be left to that officer for enquiry, but until such expert services are available the probation officer must learn to secure this information (Le Mesurier 1935: 91)

In conducting the interview, the handbook argues, the method should be “conversational...when noting the conditions of a home, care should be taken not to be too obviously looking around” (1935: 97-98). Donzelot refers to this as the “practical verification of the family’s way of life” a technique or techniques of inquiry which enable “a minimum of coercion to obtain a maximum of verified information”(Donzelot 1980: 124). The officer was, however, enjoined to make “a definite and constructive recommendation” for the court, demonstrating the optimism of the welfarist discourse within which probation operated. Probation, the *handbook* emphasised, was a specialist ‘treatment’ for those identified as in need of, and capable of benefiting from, its particular approach. Only a comprehensive process of inquiry could enable such identification:

The more attention is bestowed upon the whole question of investigation and the vast field it opens, the more clearly does the fact emerge that without thorough investigations probation must be a house built upon the sand (Le Mesurier 1935: 100).

From Moral Authority to Expert Authority

The approaches of social inquiry between 1907 and the mid 1930s remained in many ways very much the same, predicated upon the older philanthropic methods of inquiry, documentation and home visiting. The knowledge upon which such activities were based,

however, moved from a basis of *moral authority* to one of *expert authority*, with the moral connotations of philanthropy gradually replaced by those of expert assistance to a fellow citizen. As probation was accorded the status of expertise in its work in the courts and with offenders in the community, the processes by which it conducted its investigations began to become more formalised. The 1936 Departmental Committee Report on the probation service emphasised the way that the intersection of expertise and jurisprudence were articulated within the rationality of welfarism. Without inquiry, the report argued, the conditions laid down by law justifying the use of probation could not properly be met. According to such an argument the law was thus not just informed by probation discourse, but dependent upon it for the smooth and correct operation of the system (Home Office 1936: para 64).

The recommendations of the 1936 Committee were put to one side with the abandonment of the 1938 Criminal Justice Bill as a result of the outbreak of war. The work of developing the techniques of inquiry did not stop however, and the absorption of an increasing psychological vocabulary as the “casework method” emerged as the generalised tool of social work accompanied the increasingly varied work performed by probation officers during the war years. There was evidence too, that the disparate and ad hoc use of probation officers to make inquiries for the courts was becoming more standardised (NAPO 1940: 159). The increased demands of war work promoted a buoyant confidence in asserting the skills and benefits of social work and probation in general. The Honorary Secretary of the British Federation of Social workers argued that “the professional social worker in the field, who to-day is the person with the profoundest knowledge of the population and of...how things could be altered for the better. *It is they who possess positive knowledge*, it is they who are collecting the data” (Crosthwaite 1941:204 [emphasis added]). This burgeoning new knowledge which social work was bringing to bear meant, for the probation service that “you will become persons recognised by the public to speak with authority about the objects of your study and work. *The trend of modern life is to confer power on general professional opinion*” (McCord 1942: 11[emphasis added]). With this increased assignation of expertise to the probation service came also a recognition that the philanthropic role in probation had no place within such an expert structure: “probation work is skilled work which cannot be done by *any* person of goodwill with a wistful desire to do something for the underdog, however praiseworthy that desire may be” (Dallas Waters 1943: 29).

With the end of hostilities and the emergence of a systematic welfare network, there was renewed optimism for the agencies of the social. Following a period of “army discipline and strong guard” the criminal justice system, for example, could now look forward to a new era: “now we are working on the soul of the offender” (Owens 1947: 149). The welfare of each and all was to be addressed through the various agencies and authorities of the social.

Inquiry Within the Welfare State

The 1948 Criminal Justice Act promoted the expanded use of probation reports by the courts, incorporating the probation approach firmly into that of the nascent welfare state. Indeed, the Probation Rules stipulated that the officer was to encourage all those under supervision or in statutory contact with the service to make use of, in their work with the offender, “the appropriate statutory and voluntary agencies which might contribute to his welfare, and to take advantage of the social, recreational, and educational facilities which are suited to his age, ability, and temperament” (Probation Rules 1949: rule 58).

Probation now found itself operating within a firmer version of the welfarist rationality in which each problematic area of social life was conceived in terms of its forming a domain of a particular expertise. Social work formed a broad church within which various strands of such expertise operated bringing their particular specialist knowledge to bear on the problems which prevented individuals from fully benefiting from, and contributing to, the “virtuous circle” of the post war welfare state. These problems required an increased and more subtle classificatory process in order to identify and differentiate the more serious pathologies which gave rise to “maladjustment” from other, less serious, behaviours:

If maladjustment were always detected and any necessary treatment provided at an early stage, may maladjusted children who are brought before a juvenile court would never have needed to appear there...the medical and educational reports would make it clear that these children were maladjusted and in need of special treatment” (Ministry of Education 1955: para 348).

For probation, the moral authority that the service has exercised was now overlaid with positivism’s “myth of objectivity”, as Foucault puts it (1967: 276), seeking to re-align the offender not so much by moral suasion, as by identifying and exploring the causes and foundations of offending behaviour. Whereas serious maladjustment indicated a need for specialist intervention, other crimes might indicate lesser causal processes and factors which had caused the individual to stray from the norms and mores of conventional behaviour:

“the offences of some children may be attributed to the fact that they had never been taught to conform to ordinary standards of behaviour. Alternatively, their misdeeds may be natural reactions to a bad or frustrating environment...[perhaps because the child]..has failed to meet with the stimulus and outlet needed for the development of his physical, intellectual or imaginative faculties (Ministry of Education 1955: para 350).

To align the problem individual with the appropriate ameliorative authority, then, required a finely tuned and nuanced system of classification, a system to be articulated through the various reports produced by these different agencies. Probation, as Sir Norwood East put it, acted as a “useful sieve for the isolation of those in need of examination and treatment” (East 1954: 120). The process of inquiry was linked to the maintenance of social bonds and structures, to the preservation of civilisation through the supplementation of the socialising process the

breakdown of which, as Freud had noted, produced its “discontents” (Freud 1922). Indeed, the very existence of the state rested upon the “acceptance of the duties and responsibilities of individual citizenship” as the Attorney General put it (Shawcross 1950: 27). Probation’s aim, then, was still the “making of citizens” albeit on an increasingly scientific basis:

persistent delinquency suggests a failure or a retardation of civilisation.. To make a good citizen, the child, and indeed the adult, has to learn to control and organize his desires so that they harmonize and do not conflict with the general good of the community (Home Office 1951: para 175)

The end result of probation, within this strengthened welfarist rationality, was whether the probationer proves a worthwhile citizen after probation has run its course” (East 1954: 143).

The post war welfare state was thus to rely heavily on its diagnostic functions. In probation, as in other branches of social work, diagnosis, following the end of the war, was increasingly carried out as a part of the “casework method” which was taken as offering a sound, scientific grounding for both diagnosis and treatment (Morris 1950; Yellowly 1980).

Casework, Inquiry and Diagnosis: “Carrying the Past into the Present”

Between the end of the war and the late 1960s, the dominant knowledge of probation was that of casework. The casework method was predicated upon a psychological rationality in which offending was construed as the symptom of some distal antecedent factor. This necessarily required a large part of the process of inquiry to focus upon past events and experiences in an individual’s life. As a report, “The Boundaries of Casework”, published by the Association of Psychiatric Social Workers put it in 1956:

Social caseworkers do not aim at radical personality changes but at changes in underlying attitudes which affect the individual’s solving of his problems.... and, in addition, we often have to demonstrate to him how he had carried the past into the present. (Lloyd Davies 1956 quoted in King 1958: 50).

Focusing upon a form of “relationship therapy”, casework faced, according to the successor to the 1935 *Handbook of Probation*, an individual “who has suffered ‘social breakdown’ in some form or other..” (King 1958: 50). As with all other forms of casework, probation, “should begin with social diagnosis” (King 1958: 81). Diagnosis was important since an early understanding of the individual was needed and within such an understanding, early personal history was as equally important as the “current social facts” of the individual’s life and surroundings given that psychology had “shown us the relationship between early experiences and later attitudes and behaviour” (King 1958: 63).

Psychology provided probation with an underpinning positivist knowledge and one of the tenets of positivism, which has been widely criticised, is its adherence to an all-encompassing model of consensual social norms (Benton 1977; Young 1981). Certainly the act of social

inquiry was informed by such an assumption, with King arguing that the inquiry – or rather, “social diagnosis”-

is also concerned with his sense of values, and in this connection it is very important to discover whether or not these are the same as those held by the majority of his social group as this may indicate whether he is conforming to or rebelling against the standards under which he lives or has been brought up (King 1958: 63).

In order to introduce – or perhaps re-introduce- the offender into the consensual norms of society, it was necessary for the probation officer to address the offender’s “inadequate sense of reality” by bringing the client to “accept life as it really is” (Minn 1954: 138-9). Interestingly, this was not an entirely universal view in social work, with a conference held by the Association of Social Workers in September 1959 questioning the right of society “to expect conformity, particularly a society in which standards and values are in a state of flux?” (Association of Social Workers 1959: 9)⁶³.

King noted that that caseworkers in other areas of social work could often take 2-3 interviews to formulate their diagnosis, but that often the Probation Officer only had one interview: “conducted against time and under great difficulties, in the precincts of the courts, in a police cell or in the offender’s overcrowded living room” (King 1958: 81). In one interview the probation officer had to “obtain the factual information required, make a tentative assessment of the offender’s personality and that of the people in his immediate environment, and gauge his attitude toward authority” whilst at the same time ensuring that his or her own anxiety was not transmitted to the client (King 1958: 81-82).

Given the brevity of the time available to the probation officer, the social diagnosis was unlikely to be completed by the date of sentence and, King argued, the probation officer would constantly have to consider and re-consider his assessment as more information became available during the course of the probation order “and as the probationer reveals himself both in his reactions to events and in his relationship with the probation officer” (King 1958: 83). Social inquiry as diagnosis, then, was important to the delivery of effective treatment “but it should always be regarded as tentative, for it is a continuous process forming part of treatment itself” (King 1958: 83).

The very act of inquiry was, then, invested with a therapeutic value. There was nonetheless a tension between “probation officer’s desire as a caseworker to do his best for the individual and to carry him with him, and his primary duty in this particular context, which is to report impartially and objectively to the court...” (King 1964: 110). In other words there existed the possibility of a dissonance between the *authority* invested in the probation officer as a servant of the court and the *expertise* invested in her as a caseworker by virtue of training and the possession of a knowledge base. This might lead, as King noted in the second edition of *The Probation Service* to a situation in which what the probation officer judged “most likely to

advance the welfare of the offender and his family may be unacceptable to the court” (King 1964: 110). This ambiguous role, encompassing the duality of authority and expertise, led to the probation in court acting as a “mediator and interpreter” between client and court and court and client whose first job was “to make the client feel that the worker (and therefore society) cares about him, finds him, whatever his problem, acceptable, and even loveable” (Association of Social Workers 1959: 12).

How far this role of imparting both a sense of social inclusion and belonging whilst mediating between the rigours of the court accorded with the casework assumption that “part of the caseworker’s obligation is to help his clients to understand their own situation, to clarify possibilities and to get them to face reality” is hard to say and yet it is clear that there was, even at what one might identify as a high water mark of confidence in the probation service, a complex relationship between the logic of casework in terms of its conceptualisation and problematisation of offending and the aims and objectives of the law (King 1964: 111). This was particularly the case given that casework-informed social workers did not regard clients’ problems as moral problems but as emotional problems: “We regard the actions of our clients mainly of psychological significance and we judge our own reactions to them by their therapeutic value” (Association of Social Workers 1959: 14). For such a discourse to carry weight, it is clear that its sentiments and logics must have a wider resonance with the political rationalities informing and inscribing the legal system.

This period of treatment represented the apogee of welfarism, almost erasing moral and volitional factors in favour of translation of deviance into social pathology within a register of expert discourse in which such discourse inscribed the offender’s behaviour within a technical register but then *reinscribed* it for the court into a technically cut-down model, stripped of jargon for a lay audience, providing

“a word picture in ordinary language of the strengths and weaknesses in the offender’s make up and the relevance of these to the offence. Here the probation officer may try to assess the quality of the offender’s attitudes to society, the values by which he steers his conduct, and the possibility of modifying them...”(King 1969: 190).

Scientific Authority and Expertise: Streatfeild and Morison

The Streatfeild and Morison Committees of the late 1950s and early 1960s examined, debated and reinforced the probation service’s role in the carrying out of social inquiries and in supervising of offenders (Home Office/Lord Chancellor’s Dept 1961; Home Office 1962a). The Streatfeild Report in particular portrayed probation as having a key role to play in what it considered to be the increasingly scientific art of sentencing, noting that before the advent of the probation service, courts had rarely requested detailed information on an offender, whereas “courts now place increased emphasis on the offender’s social and domestic background” leading to an increase in the amount of information they wished to consider during the course of

a trial (Home Office/Lord Chancellor's Dept 1961: para 343). The information contained in the social inquiry report, the Committee noted "is material which will not usually be available to the court from any other source and may therefore be essential if the sentence is to be based on adequate information" (Home Office/Lord Chancellor's Dept 1961: para 344).

Although the committee thought that 'stereotyped' report formats should not be used, they enumerated certain items of information considered by themselves and NAPO to be of general utility in furnishing the court with the information it needed. These were:

essential details of the offender's home surroundings and family background; his attitude to his family and their response to him;; his school and work record and spare -time activities; his attitude to his employment; his attitude to the present offence; his attitude to previous forms of treatment following any previous convictions; detailed histories about relevant physical and mental conditions; and assessment of personality and character (Home Office/Lord Chancellor's Dept 1961: para 336).

The Morison Report, published the following year, gave the probation service an approving appraisal of its role and tasks and provided an official label for the reports it produced – "Social Enquiry Reports". It did, however, err on the side of caution in regard toward the expression of the probation officer's opinion on the likely effects of sentences ("methods of treatment") that might be passed upon an offender, remarking that

probation officers are not now equipped by their experience, and research cannot yet equip them, to assume a general function of expressing opinions to the courts about the likely effects of sentences (Home Office 1962a: para 41).

The two reports, then, represent a political dialogue over the appropriate limits and parameters of probation discourse within the court setting, although both expressed their faith in the possibility of science to enhance the probation officer's knowledge over time. Nonetheless, the welfarist modification of the sovereign power of the law to include the views of expert authority was now well established and the Morison Report inscribed the authority of probation as experts of the court within political discourse, acknowledging their credentials thus:

their training and experience as social workers equip them to investigate offenders' family and social backgrounds, to make their enquiries acceptably, and to marshal and interpret the information they obtain...their knowledge of delinquency and their experience of the courts gives them a special ability to appraise offenders' characters and motives and to distinguish factors which may have influence the commission of offences or be relevant to the courts' decisions. (Home Office 1962a: para 30).

Ambivalent Authority: Questioning the Social Inquiry Report

The 1970s saw the development of an internal critique as the probation service began to bring to bear a reflexive focus upon its role in the preparation of social inquiry reports. The numbers of SIRs being prepared for the courts had increased exponentially during the 1960s (Davies and Knopf 1973) creating fears within the service that the supervisory role of the probation officer might be compromised by the increased time being spent on writing Social

Inquiry Reports (Perry 1974) – ironically, to some, rendering the service a victim of its own success (Robinson 1971). The debate continued throughout the 1970s without resolution. This internal critique ran parallel not only to a growing demand for SIRs, but also to gentle encouragement from the Home Office for officers to make recommendations to the courts on the likely effects of various sentences – something the Morrison Report had considered outside the appropriate role of the probation officer (Home Office Circular 28/1971: para 25)

This questioning of the form and purpose of the social inquiry report ranged over a wide section of the penal landscape. SIRs were problematised various ways: in terms of their capacity to disadvantage defendants who were pleading not guilty to a charge (Plotnikoff 1973), with Herbert and Mathieson suggesting that one way to make the workload of officers more manageable would be to stop the preparation of such reports (Herbert and Mathieson 1975); in terms of their collection and utilisation of relevant information and for the tendency of officers to arrive at a conclusion first before writing the report in support of it (Perry 1974) and in terms of the general relevance of SIRs to the sentencing process since there was, it was argued, little evidence to support the value of the SIR as a sentencing aid (Bean 1976) and even questioning the ability of probation officers to make a “professional evaluation” at all (Bean 1974; 1976). Davies (1974) called attention to the fact that the rise in the numbers of reports requested had not been associated with a corresponding fall in either the crime rate nor in the numbers of offenders sent to prison. Many commentators called for more training and guidance in the preparation of Social Inquiry Reports and for clarification of the ways in which sentencers were expected to make use of the information contained in them (Bean 1971; Mathieson and Walker 1971; Home Office 1974; Perry 1974; Herbert and Mathieson 1975).

There was then, an emergent tension between the official role of the probation officer as an advisor to the court and the perceived validity of that role as well as a growing questioning of the knowledge base that informed the probation officer’s inquiries. The officer’s report to the court had moved from the “informed opinion” mentioned in Streatfeild (Home Office 1961:para 346) to an expert recommendation on sentencing which might propose not only probation custody or fines and discharges but even deportation (Ford 1972). Yet clearly, from the internal critique alone, this expertise held a problematic status, even amongst its own practitioners. On the one hand, social inquiry reports were held to be “comprehensive, objective documents” but on the other, the responsibility of the probation officer as an officer of the court created “a very delicate balance between the probation officer’s responsibility to the needs of his clients and to the requirements of society” (Mathieson and Walker 1971: 6-7). This apparent tension between the needs of society and the needs of clients was open to resolution, however, if the probation officer’s task in effecting the governance of the offender was properly realised: “society requires its criminals to be reformed and the client requires his problems to be solved. The probation officer is the one who enables both sets of requirements to be fulfilled” (Mathieson and Walker

1971: 7). The rights and obligations of society and individual could be realigned through probation's expertise in restoring the welfarist nexus. By the end of the decade, however, Weston argued that the probation service had not, either as an organisation or at an individual level, "developed expertise in being clear about our aims and about how we achieve them" (Weston 1978: 12). Others argued that, rather than making impartial recommendations to the courts, probation officers might be seen to "align themselves with defendants and 'play the system' to their advantage" (Perry 1979: 67). For Bottoms and McWilliams, the answer was to provide a new paradigm, the *non-treatment model*, in which "traditional core values of respect for persons and hope for the future can be realised in a non-treatment context" (Bottoms and McWilliams 1979: 159). At the heart of this model was a notion of 'help' which would be related to the offender's needs as defined by the offender rather than an intervention based on the probation officer's diagnosis. The ambiguity of authority in this model is further evidenced by the authors' references to the "apparent incompatibility between help and surveillance" (Bottoms and McWilliams 1979: 177). For them, the SIR recommendation would be the result of tactical negotiation between client and officer. This approach was echoed by Bryant *et al* (1978) who argued that the help available to offender by the probation service should be a matter of choice rather than the offender being "sentenced to social work".

By the end of the 1970s, then, the relationship between probation and the criminal justice system, always somewhat tenuous given probation's reformist roots, tendencies and affiliations, was increasingly troubled by its often ambiguous role, with a particular area of problematisation being the logic and rationale that underpinned the preparation of social inquiry reports.

Back to Justice?

By the start of the 1980s, probation was operating in a political environment in which not only were its roles and functions open to debate and critique, but so too were the wider welfarist foundations upon which these roles and functions had developed throughout the *twentieth* century. Given that "programmes of government have depended upon the construction of devices for the inscription of reality in a form where it can be debated and diagnosed", the growing salience of a new political rationality following the New Right's electoral success in 1979 had major implication for the process of social inquiry (Miller and Rose 1993: 81). With the justice model's critique of welfarism and the increasing discord in probation circles over the potential for SIRs to discriminate against or disadvantage their subjects, this critique continued throughout the 1980s particularly focusing on the power of reports to have a detrimental effect on sentencing, with probation reports criticised for their discriminatory effects on the grounds of race (Whitehouse 1983, Denney 1992 but cf. Waters 1988), gender (Eaton 1986; Allen 1987; Worrall 1990), and their possible reinforcement of, contribution to, or downright collusion with,

the stereotypical attitudes of sentencers towards offenders (Brown 1990; Osborne 1984; Walker and Beaumont 1981). Several commentators argued for a standardised format to prevent the continued submission of “inconsistent and diverse material” to the courts (Osborne 1984: 375; Perry 1974, 1975, Herbert and Mathieson 1980).

Interestingly, whilst social inquiry reports remained the subject of almost constant debate in probation and academic discourse, during the first half of the 1980s these reports were given increased salience by central government. The 1982 Criminal Justice Act constrained sentencers’ use of custody for the under 21s and made a report necessary for those where custody was being considered. The introduction of “4A” and “4B” requirements for probation orders was accompanied by a requirement for consultation with a probation officer (usually in the form of an SIR) before the order was made (HOC 4/1983: para 10). The Home Office also advised services that SIRs should focus on the provision of “relevant information” to sentencers whilst also noting that recommendations were more likely to be taken up if accompanied by an explanation of the purpose and aims of a proposed sentence (HOC 17/1983 para 3; HOC 18/1983: para 4). By 1984, the Statement of National Aims and Objectives was also recommending that SIRs should be produced on a more focused population, notably where there was a statutory requirement for such a report, where a probation order was likely, and where a court was inclined toward diverting an offender from a custodial sentence (Home Office 1984: section viii). 1986 saw the first advice from the centre about the use of cultural and racial factors in reports (HOC 92/1986).

New Orders: the 1991 Act and Pre-Sentence Reports

The Criminal Justice Act of 1991 reformulated social inquiry reports as *pre-sentence reports*. Now, reports would be required where custody was being considered in cases involving summary or ‘either way’ offences or where a community penalty was being considered (Criminal Justice Act 1991: Ch.53, 1 (2)). A Pre Sentence Report was officially defined as a report in writing, made

- (a) with a view to assisting the court in determining the most suitable method of dealing with an offender, is made or submitted by a probation officer or by a social worker of a local authority social service department; and
- (b) contains information as to such matters, presented in such manner as may be preserved by rules made by the Secretary of State

(CJA 1991: Ch53, 3.(5)).

Pilot trials were set up by the Home Office and Lord Chancellor’s Department in five Crown Court Centres to test out the new reports, obtaining SIRs in cases where a PSR would be required by the new Act (Bredar 1992). Part of the project involved an academic study of the

quality and effectiveness of the reports prepared during the exercise (Raynor and Gelsthorpe 1992a; Raynor and Gelsthorpe 1992b; Gelsthorpe, Raynor and Tisi 1992; Gelsthorpe and Raynor 1995). The findings of the research emphasised the need for quality control mechanisms in order to maintain consistency and thus reduce inequity in court outcomes. The researchers noted of PSRs in their conclusions that:

The emphasis that they place on content, on individualization, on attitudes, and on motivation corresponds closely with similar themes in the training and professional culture of social work, and suggests a continued relevance for social work skills in probation practice (Gelsthorpe and Raynor 1995: 198).

The radical nature of the Act had major implications for the probation service, aiming to reduce the use of custody for non-violent offenders and to secure a consistent basis for the provision of information to sentencers in the new pre-sentence reports (Home Office 1992). The requirements placed on sentencers to obtain PSRs in certain cases, particularly where custody was being considered in a case involving a summary or triable 'either way' offence, seemed to resolve some of the tensions that had existed in probation discourse over the possibility of reports colluding with, or contributing to, discriminatory sentencing. However, within a short space of time, these requirements were revoked after sentencers resisted what was perceived as an infringement of their discretion (Ashforth 1997).

New National Standards were issued in 1995. The proposal of the report was emphasised as being the culmination of the logic of inquiry: "The conclusion should flow logically and directly from the rest of the report. It should reflect the preceding assessments of the nature and context of the offence, the offender's personal circumstances and any potential risk to the public" (Home Office 1995: para 2.25). The official depiction of the PSR and the process of its construction was subtly, rather than overtly, different from the Social Inquiry Report. It is true, of course, that SIRs had never had such a comprehensive description of how they should be put together, what they should address and how their contents should relate to the suggested outcome. With reference to the emergence of neo-liberal modes of government, the pre-sentence report marks at this point a turning point rather than a paradigmatic shift away from the previous practices and procedures of social inquiry. On the one hand, the examination of extra-legal circumstances and personal experience, behaviour and misfortunes is still admitted to the evaluatory calculus of the report. On the other, there is a move toward a counterbalancing of positive and negative data: "the report should provide a **balanced** picture of the offender, setting out both strengths and weaknesses" (Home Office 1995: paras 2.19-2.21, (emphasis in original)). In such a rational calculus of positives and negatives, the conclusion will therefore be predicated upon individual factors but will lend itself open to sentencing which weighs the offender upon the scales of justice using as counterbalances those specified pieces of information which suggest severity or leniency. The end purpose of the PSR in the mid 1990s, however, was still oriented

toward intervention as social work, with the 1995 standards referring to the role of probation pre-sentence inquiries as an assessment of the offender's suitability for "social work intervention" (Home Office 1995: annexe 2B).

Toward Neo-Liberal Inquiry

The rapid pace of change and reorganisation following the election of a Labour Government in 1997 has also impacted upon the pre-sentence report in ways which display a much clearer distinction between the welfarist model of social inquiry and the new pre-sanction process. National Standards 2000 (Home Office 2000) set out a more circumscribed and prescriptive model of assessment and inquiry than any of their predecessors. Where the 1995 standards had still referred to probation as social work, the year 2000 edition now comes with a statement on the cover from Home Office Minister for prisons and probation Paul Boateng: "WE ARE A LAW ENFORCEMENT AGENCY. It's what we are. It's what we do" (Home Office 2000, capitalisation in the original)

The standards set out a list of requirements concerned with working practices, record keeping and information supply. Of particular note in the new standards is the inclusion of a requirement that reports should

"be based on the use of the Offender Assessment System (OASys), when implemented, to provide a systematic assessment of the nature and the causes of the defendant's offending behaviour, the risk the defendant poses to the public and the action which can be taken to reduce the likelihood of re-offending" (Home Office 2000: B4).

The information for the courts will be set out within a framework encompassing an *Offence Analysis*, which includes assessment of culpability, attitude to the offence and to the victim, details of the consequences of the offence including a Victim Impact Statement if available, an *Offender Assessment*, in which reasons for offending are discussed alongside a statement of the "offender's status" in relation to literacy and numeracy, accommodation and employment. Consideration of the impact of racism on the offender's behaviour where directly relevant is also to be provided (Home Office 2000: B7). An *Assessment of the risk of harm to the public and the likelihood of reoffending* must also be given. This assessment must evaluate the likelihood of reoffending, serious harm to the public and the risk of self-harm (Home Office 2000: B8). This use of an actuarial predictor of risk echoes Feeley and Simon's (1992; 1994) argument that Western societies have moved toward a new form of penal practice – "actuarial justice" – predicated upon the identification of dangerous or problematic groups with the intention of managing rather than normalising such populations.

The standards require that the conclusion of Pre-sentence reports should evaluate motivation and, where relevant, set out a plan for the improvement of motivation; emphasise that reports should, in the interests of public protection, include proposals for custody and also for the extended supervision of sex offenders. The assessment of home circumstances remains of

importance, but for the evaluation of the offender's suitability for a curfew order (Home Office 2000: B9).

Specific sentence reports (SSR) are now also being prepared to enable a "fast track" approach to the provision of information. An SSR is "a PSR for the purposes of Part 1 of the Criminal Justice Act 1991 and is used to speed up the provision of information to the court to allow sentencing without delay and is most likely to be used where the court envisages a community service order of up to 100 hours or probation order without additional requirements" (Home Office 2000: B10). Such reports are generally to be delivered to courts on the day of request, thus speeding up the sentencing process although the writer may suggest an adjournment for a full PSR if s/he believes that this is necessary.

From Social Inquiry to Pre-Sentence Report

In this final section, I want to sketch out the implications of the shift from SIRs to PSRs in terms of the governmental arguments which have structured and informed the previous chapters and in order to pave the way for the following chapter on the research design and method.

In the case of social inquiry, I have argued that this was a practice linked to and conditioned by, a welfarist rationality. The logics of such a rationality provided both the conceptual space and the epistemic surface upon which the individual offender could be inscribed into language. This language was diagnostic and pathological in that it characterised much offending in terms of the factors that determined such behaviour (McWilliams 1986). The probation officer as social worker, was "skilled in the specialised business of the influencing of, by scientific methods, individuals who constitute society" with the aim being to "cause them to function in accordance with human welfare with greater efficiency" (Halbert 1923:25).

From its inception as an official agency, the probation service had been allocated a position within the expanding panoply of experts of the social, charged with the assessment and diagnosis of certain deviant behaviours. For much of the century, as we have seen in preceding chapters, the service did this through the assimilation of a psychological vocabulary through which offending was transcribed into a register of causality and influence, particularly the influence of past experience.

Within the nascent welfare state, the role of the expert became welded into the nexus between state and individual and in which individual deviance was to be resolved through the deployment of authorised experts to re-establish this reciprocal and mutually beneficial relationship. Within the political rationality of welfarism, this nexus formed the guarantor of social continuity and coherence: "The worker, the client and the setting are the basic components of action and must be viewed as a whole" (Titmuss 1954, quoted in Timms 1968: 47). The reestablishment and reincorporation of the offender, then, called for accurate diagnosis a process

effected through the social inquiry. The expertise allocated to the probation officer which informed the process of social inquiry was initially invested in the officer through the acknowledgement of his or her character – the religious and humanitarian motivation which informed the decision to become a probation officer. Thus this authority was largely predicated upon a *moral authority*. With the gradual development of a professional identity and the assimilation of a ‘scientific’ knowledge base, this authority – expressed in the officer’s opinion as to *why* the offender had strayed from the path of normality- now derived from the that person’s institutional position rather than from their social status and character (Foucault 1967: 275).

Within the welfarist rationality, the explanatory logics of normal and abnormal individual action and the means by which normality could be restored, together with a particular perspective of the individual’s role within society formed the parameters within which the social inquiry operated as a governmental assessment: the social inquiry would provide details of the offender necessary for the sentencer to *know* that individual, problematising his or her behaviour, rendering it visible and thus amenable to debate and intervention by setting out the causes, correlates and circumstances that had shaped the offender’s life in such a way that offending had resulted.

This was a deterministic perspective in which the offence needed to be considered in terms of “his response to his environment and his reaction generally to the external forces which have been instrumental in shaping his life...a study of his conduct and an estimate of his character, leading up to a realization of his personality..” (Le Mesurier 1935: 94). Within this welfarist logic, such determining factors led in various ways to a “social breakdown” in the reciprocal obligations and rights of state and citizen as a result of deviant behaviour (King 1958).

The probation officer, in this welfarist matrix of knowledge, then functioned as a social diagnostician in his or her inquiry work for the courts (Holmes 1902:79; Home Office 1910a: para 4; Le Mesurier 1935:88; Lieck 1937:161; King 1958:83). Through careful inquiry, the way was paved for appropriate intervention, an intervention that could be made on grounds unacceptable within the formal structures of law:

Neither the ‘criminality’ of an individual, nor the index of his dangerousness, nor his potential or future behaviour, nor the protection of society at large from these future perils, none of these are, nor can be, judicial notions in the classical sense of the term (Foucault 1988c: 144).

The probation officer gathered this information on the offender and then sought to interpret it through the discursive prism of his or her expert knowledge, interpreting it for the courts, highlighting the salient issues as appropriate. An example of ‘good’ interpretative practice is given by Perry:

The contributing factors in his delinquency appear to be the absence of any positive moral influences in his upbringing, a highly delinquent neighbourhood, where his elder siblings, his

mother, stepfather and grandparents all have distinctly low standards of behaviour, and highly charged emotional relationship with his mother, who is very dominating but unreliable (Perry 1974: 45).

Within this biographical synopsis we can see the assembly of a complex matrix of relationships between moral standards, environmental influence, socialisation and affective relationships together with a moral evaluation of the mother for good measure. The terrain of the social, in all its diverse contours, provides the landscape which social inquiry must attempt to map, traversing those surfaces upon which expertise can attach diagnostic meaning and significance.

The belief in the possibilities of the accretion of these necessary knowledges of the individual and the social provided an optimism which suffused welfarist discourses and promised new and better solutions further down the line⁶⁴. The Streatfeild and Morison Reports provide a political expression of this teleological anticipation. Whilst they were somewhat cautious about the probation officer's *present* role in advising the courts, they could, nonetheless, anticipate the day when such expertise would provide scientifically sound and empirically based diagnoses to inform the courts' decisions as to 'treatment'.

In contrast, the emergence of a neo-liberal rationality during the 1970s and 1980s provided new concepts and logics for understanding the individual and for representing his or her behaviour for the courts. The new right conservative governments after 1979, for example, sought to "re-establish a code of conduct that condemns crime plainly and without exception" (Riddell 1989:171). The permeation of probation discourse by the logics of the political rationality of neo-liberalism has been a slow process, however, one which does not reveal on inspection and analysis, a radical point of rupture with the practices, policies and purposes of welfarism. Instead there has been a slow process of mutation, accommodation and transformation, reflected in the new approaches to the way in which individuals are assessed as suitable for governance through probation intervention. Accompanying this has been an increasingly centralised, prescriptive stance toward processes of inquiry and assessment.

The new national standards reflect both a concern with 'quality control' and the standardisation of report writing practice together with a more authoritarian stance toward the report writers themselves. In fact, the standards set out a diagram of government at-a-distance for the probation officer in his or her report writing activities that are to be adhered to "in all but exceptional circumstances and that any decision to depart from them be endorsed by the designated line manager on the offender's record, giving full reasons" (Home Office 2000: A2). Discretion is thus to be minimised in the provision of a consistent report format.

PSRs in the twenty first Century

Despite the discursive differences between social inquiry reports and pre-sentence reports described above, it is by no means clear that pre-sentence reports in their new format reflect a total transformation of the older practice of social inquiry. It is, however, even on cursory inspection, apparent that the practice of inquiry and report writing has been substantially reformulated and recast within new parameters, reinscribing the role, function and authority of the probation officer in new ways. Several instances of change have occurred since the 1991 Criminal Justice Act, and which provide indices of a divergence from welfarism are:

- The creation of a standard format whose content is to be determined by prescribed criteria pertaining to:
 - the analysis of the offence
 - an assessment of the offender
 - an assessment of the risk of future harm to the public
 - a conclusion evaluating motivation, suitability for a community penalty and details of the content of any such penalty and an assessment of the impact of custody where such a sentence is likely.
- The limitation of the officer's ability to circumscribe this prescriptive formula.
- Actuarial considerations of the likelihood of reoffending and the appropriate disposal according to the Oasys scale.

Whilst such requirements as those above might suggest more of a *formalisation* of practice in order to ensure consistency of standards of service, they also have particular implications for notions of *expertise* and it is these which, I suggest, imply a considerable shift away from welfarist practices of inquiry. The first implication is fairly clear: the report writer is no longer the expert in determining the content of the report. Whereas the welfarist rationality allocated the report writer a primary role in the type of information collected and the subsequent interpretation of the salience and relevance of such material – a role allocated by virtue of the writer's professional knowledge- the neo-liberal model reframes the pre-sentence report as a product whose quality is determined not by professional abilities and capacities but by the writer's conformity to a particular diagram of what constitutes a 'proper' report. In effect, the new model exteriorises epistemic priority, with the national standards themselves providing an authoritative and definitional text, adherence to which constitutes good practice – as Smith (1990:4) has observed, such relations of governance are "textually mediated".

A further point for consideration is the temporal re-orientation of pre-sentence reports. The welfarist epistemology of probation, particularly (but not exclusively) in its most emphatic form of social casework, offered an explanation of offending that drew heavily upon an interpretation of the relevance and meaning which prior events in the offender's life had for the current offence. This deterministic role enabled the formulation of the offending behaviour

within a logic of socialisation, an assessment of the adequacy of an individual's socialisation and social adjustment. The problems of the past were to be brought into daylight so that the offender could, under the tutelage of the probation officer, begin to understand and come to terms with them (later social work practice would also take into account structural impediments but the effect was broadly similar in terms of creating a relationship based upon expert pastoral guidance and assistance). In consequence, the offender was construed in terms of an individualised problematic: although the knowledge of probation provided general guidance on the aetiology of crime and criminality, the relevance of specific instances and moments were for the expert herself to identify and map onto patterns of social behaviour exhibited by the client.

In contrast, neo-liberal rationality provides a vocabulary of choice and autonomy, construing the individual as a rational actor, capable of weighing the rewards and pains consequent to a particular action. Certain factors, however, typify those who are prone to acting in ways which disturb the sensible and ordered behaviour expected of individuals in such a society. Through the such of such risk factors, the characteristics of a particular population can be assembled as a statistical device for profiling the behaviour of others. Such actuarial reasoning enables the "taming of chance" (Hacking 1986), the identification of those likely to pose a risk in the *future*. It is here, in the predication of the new pre-sentence report upon such a predictor that we see a particular shift away from an emphasis on the past – the distal and proximal experiences, relationships and occurrences that have shaped the individual's life to date- to an emphasis upon the future, a consideration of what *might* happen to an individual whose risk profile corresponds to that of others whose behaviour has been used to devise such a probabilistic measure.

The description and arguments above, then, set out a potential schema for analysing the language of pre-sentence reports. In the next chapter I discuss how the language and representative styles of probation reports are to be analysed in order to consider the presence of welfarist or neo-liberal vocabularies.

5 Language, Representation and Governance: the research method

The activities of probation have been depicted in this study as taking place against a backdrop of two broad discourses of rule – welfarism and neo-liberalism. The former described the overall shape of modes of governmental thought between the late 19th and the late *twentieth* centuries whilst the latter represents modes of conceiving the need for, and shape of, political action since the late 1970s. I have described how characteristics of each of these political rationalities may be found in the discourse of the probation service at different times and I have suggested that the tenets of neo-liberalism are now clearly identifiable within the practices of the contemporary probation service.

This chapter provides a framework for analysing a set of pre-sentence reports in order to assess to what extent these reports demonstrate the concepts and assumptions of welfarism and/or neo-liberalism. To the extent that reports evidence traits of one or the other of these rationalities, it will be appropriate to argue that the welfare-neo-liberal shift discernible across a wide range of governmental institutions and agencies and in their discursive activities is also applicable to the probation service. This will suggest a model of change in probation which does not rely upon notions of social control or a shift away from ‘social work values’ but which sees the dimensions and parameters of the concepts of probation practice as conditioned by a wider realm of political discourse.

Pre-sentence reports are prepared to a technical specification which requires an officially stipulated format which includes the categories and classifications stipulated as being necessary to the sentencing process. There is, in other words, a discursive constraint upon the parameters of what may be said within the report and an assumption that the categories which are officially required provide the only acceptable form in which such information should be presented. For pre-sentence reports, the court setting provides a “context of utterance” within which probation officers’ reports are authorised and accredited as having a factual and veridical form (Dant 1991: 153). Thus, within the court setting, probation officers are allocated a certain power over the subjects of their reports, a power of creating, imposing and sustaining meaning over and above the subjective interpretation of the subject herself (Fairclough 1989:13). Importantly it is this authorised version of reality which informs, to a large degree, the final sentencing decision (Worrall 1990:9). Consequently it is not that reports provide an objectively definitive systematic and veridical depiction of the offence and offender so much as that they are dealt with in court as being true by the nature of their and their authors’ structural location within the system (Foucault 1972:190)

Analysing pre-sentence reports as discourse

Since the focus of this research is the *content* of PSRs, its focus is, of necessity, on *language*. In the social sciences, there has been an increasing awareness of the role of language in constructing and structuring social interactions and relationships (Potter and Wetherell, 1987; Shotter and Gergen 1989; Brown 1992; Rosenau, 1992). Increasingly, such studies have addressed the ways in which language and power are woven together in ways which invest processes of signification with a political dimension related to the roles of signifier and signified in particular social relationships. There is a modest discourse analytic literature addressing issues of power and language in various aspects of the courtroom setting (Shuy 1992; Ng and Bradac 1993; Wodak 1984; Bradac *et al* 1981; Burton and Carlen 1979; O' Barr *et al* 1978) although these approaches are not explicitly Foucauldian in their approach to their subject.

As Van Dijk (1993; 1994; 1997) notes, much discourse analysis focuses upon an eclectic mixture of linguistic knowledge coupled with theories of the social construction of meaning through talk and conversation. The approach taken in the present study to analysing the discourse of pre-sentence reports does not address the formal properties of discourse characteristic of linguistic approaches to analysing texts and talk. It is not my aim here to focus upon these interactions and social processes by which probation officers elicit information from the individuals upon whom they prepare reports. It is also important to stress that the approach here is one of analysing discourse rather than the interactional processes involved in its production (Rodger 1991:65). This is not to imply that there is an absolute distinction to be made between such approaches, indeed Miller argues that the distance between many of the assumptions which inform studies of such interactions and those which inform Foucauldian discourse analysis are much less oppositional than is often imagined (Miller, 1997). This approach, then, treats discourse in its material form, as manifested in pre-sentence reports. However, despite this focus on the materiality of discourse, it is not my intention to rely upon the techniques of content analysis by which themes, ideas, concepts and so on are translated into a format amenable to quantitative analysis. Such an approach is unable to handle the subtlety through which language may produce its effects and anticipates a consistency in discourse which may well not be present (Potter and Wetherell 1987:41; Ericson, Baranek and Chan 1991 (although see Van Nijjnatten 1988 for an example of the use of content analysis to examine discourse in Dutch welfare reports).

PSRs, Discourse, Power

Instead of a focus upon interactional, processual or overtly empiricist methods, then, my strategy here will deploy an approach based upon various aspects of Foucault's work. Firstly, I begin from an assumption that pre-sentence reports represent a "regime of truth" within the criminal justice process (Foucault 1980). That is to say that court reports exemplify veridical techniques of inquiry whose capacity for accuracy and objectivity is underwritten by institutionally invested power relations – they provide "the authoritative word" on offenders for

the court, a word which, as Bakhtin notes, we encounter “with its authority already attached to it” (Bakhtin 1981: 342). For Foucault, such a discourse “is to be understood as a system of ordered procedures for the production, regulation, distribution, circulation and operation of statements” (Foucault 1980: 133). This system of “relatively internally consistent, bounded language units” provides the parameters of a particular knowledge, defining what can and cannot be said and offering practitioners of that discourse an “interpretative repertoire” of concepts, statements, definitions and so forth (Wetherell and Potter 1988:172; Gilbert and Mulkay 1984). Truth is invested in the PSR via its structural positioning within the system of law and via mechanisms of training, authorisation and accreditation (Foucault, 1972:125). The language of the social practice of report writing is thus shaped by the social structure which provides the operational context for these reports (Fairclough 1989: 17).

Foucault noted that discourses have certain hierarchies through which particular discourses take precedence over others (Foucault 1971). A powerful example of a hierarchically elevated discourse is that of law. The operations of the law provide and define roles for other subaltern discourses which operate in a complementary manner. “Law defines the status of the specialist practices and sets limits to the powers of the agents and institutions involved” (Hirst, 1980: 92). Foucault notes that legal conditions “give the right-though not without laying down certain limitations-to practise and to extend one’s knowledge” (Foucault 1972:50). The power of the Law is to some extent diluted in that it takes into account discourses other than the purely legal: “[t]he law in recognizing knowledges beyond itself...abandons its own claim to be the exclusive form of penal discourse” (Garland, 1985: 28). The court provides a ‘context of utterance’ whose statutory role enables it to “empower speakers with the authority to speak on certain areas of knowledge” (Dant, 1991:153). This means that when legally accredited discourses speak, “they carry an authority” provided that their accounts are organised in terms of the “judicial system’s perspective of the world”(Hydén & Colgan, 1994: 552; 549). This authority has material implications for the subjects of such a discourse, such that the “texts that we write make a difference; these differences often have effects on the lives of “real” flesh and blood people” (Denzin, 1990: 214).

The power and influence of pre-sentence reports, then, can be seen to derive from the structural authority invested in them. Foucault argued that discourse statements “cannot be disassociated from the statutorily defined person who has the right to make them”(Foucault 1972:51). In a similar vein, Worrall notes that “[w]ords and actions acquire socially determined meanings which exist independently of the intentions of the particular subjects who use these words or engage in those actions” (Worrall 1990: 7). That is to say, it is not so much as what is said, as who- in terms of a certain status of capability- says it. As Pêcheux puts it, the things people say “change their meaning according to the positions held by those who use them.” (Pêcheux, 1982:11). Thus professionals in court are ascribed more credibility when they speak than are ‘lay’ persons; adults are seen as more authoritative when they speak than children and men are often seen as more competent and knowledgeable when they speak than women.

Relations between the speaker of a discourse and the object of discourse are relations of power, since the way discourses are privileged or subordinated in their ability to give meaning has material effects for those whose lives are the subject of particular official discourses (Fairclough 1989: 52).

How the probation officer views the offender and his or her behaviour is mediated through the knowledge imparted through her training as to how the world *is*. In preparing a pre-sentence report, the probation officer uses techniques transmitted through training which provide a “historically specific set of professionally received ideas...which organise the recipient’s professional world” (Rojeck, Peacock & Collins, 1988:7). The theories contained in probation officer’s professional vocabularies will necessarily shape the ways in which the offender is represented in the Pre Sentence Report since they “refer to a specific discourse, a specific way of organising meaning and establishing authority” (Rojeck and Collins 1988). But other theories may also be present: representations are not just received from professional training but are part of our shared ways of looking at the world. Relationships of power invest and traverse the various discourses through which we communicate. Racism and sexism, for example, contain representations that serve to denigrate and disadvantage their subjects and render them inferior as ‘other’ in comparison to ‘us’ (Van Dijk 1991, 1992). The relationship between PSR author and defendant is not one of equality, where the probation officer merely sets out what the offender has to say about the offence and his/her own life. This encounter can be seen as a ‘gatekeeping encounter’, an encounter where the gatekeeper belongs to a socially dominant cultural group and where the gatekeeper controls and constrains the contribution of the non-powerful other in the encounter. This unequal power relationship has implications for the type of discourse used to depict the actions of the offender since “white middle class gatekeepers are likely to constrain the discourse types which can be drawn upon to those of the dominant social grouping” (Fairclough, 1989: 46-47). This would be relevant, for example, in reports where a black defendant was describing an experience of racism that the officer was unable or unwilling to place within the text of the report (Denney 1992). This professional ability to reconstruct the experience of another can be seen as “an element in the domination of, particularly, black and Asian minorities by the white majority, and of institutionalised racism.” (Fairclough, 1989: 49). Worrall (1990) also refers to this process as serving to “mute” women offenders by restricting and constraining the forms of explanation within which their offending behaviour can be presented to the court. The power of the PSR author, then, extends to providing authorised and authoritative version of reality which override the subjective account of the offender. Even where PSR writers are aware of the possibilities of discriminatory practice they may still engage in various rhetorical tactics in order either to try to influence the sentencing outcome (and in doing so, reproduce stereotypical imagery as part of their strategy) or to maintain their own credibility with the court (Carlen and Powell 1979).

The way that PSRs are written, may impact upon the sentence received by the offender in two ways: one is via the conscious intention of the author in proposing a particular penalty as

being more suitable than another. Since around 65-70% of PSR proposals are followed by sentencers (Gelsthorpe and Raynor 1995), it is reasonable to suppose that these proposals carry considerable weight with sentencers in reaching a decision. Some probation officers may thus take a conscious approach to trying to achieve some influence with the court. This has been particularly likely where probation has sought to achieve diversion from custody and to provide alternatives to imprisonment. However, such strategies are unlikely to be deployed openly in contemporary PSRs since they form no part of its official function as laid down in National Standards.

A second way in which reports may contribute to this process is through a more indirect means whereby the language of representation confers more subtle, negative messages to the court, invoking sexist, racist or other discriminatory images which may cause sentencers to react to these textual features of the report by imposing a more severe sentence than would otherwise have been the case. This issue of reception has been noted in some studies of sentencers' decision making at Crown, Magistrates and Juvenile courts (Parker et al 1989; Brown 1990; Gelsthorpe and Raynor 1995). The possibility of producing a more negative outcome through the use of a particular rhetorical strategy thus imbues the PSR with a potential dimension of power as well as its officially sanctioned purpose and which may function in a manner irrespective of the intentions of its author (Brown 1990).

Problematisation and the Logic of Intervention

In my analysis of probation discourse in PSRs, I shall attend to the implications of discourse for the governance of the individual offender. The report serves as a technology of government, addressing the complexity of the case and rendering it "in the form of an object which is programmable" (Gordon 1980: 248). From this perspective, PSRs present their information as a "true" account of the offence and offender, an authorised version of the events and circumstances linked to a particular offence in terms of an overall problematic of the offender and, consequently, a proposed intervention aimed at securing the governance of the individual. This involves a translation of the circumstances of a case into a technical register in which the problem becomes amenable to a solution (Rose 1996a:352). Since the theoretical exposition within the preceding chapters has depicted the regimes and practices of government as being shaped by two major forms of political rationality, the dominant figures and concepts of such rationalities can be used as an exploratory template for examining the governmental considerations of reports.

Central to developing this approach is the notion that language does not act as a neutral "mirror of nature", reflecting within its statements an isomorphic correspondence with reality. This entails a rejection of the positivist belief that the truth of a discourse depends upon the truth of its object: language is not merely the medium through which truth is expressed, rather, language is constructive and active in the production and organisation of social life and its categories (Smith 1984). As Foucault puts it, discourses are "practices which systematically form

the objects of which they speak” (Foucault 1972: 50). The creation of *objects* – that is to say, the depiction of certain officially approbated aspects of an individual’s life- will be a key mechanism of analysis in identifying how subjects are problematised, how such problems are represented and how this mode of representation suggests a programme of intervention which logically follows from the precepts of the preceding problematisation. The unpacking of this process provides the basis for an “analytic of government” in terms of the conceptualisation and resolution of particular problematics of government (Dean 1999:64).

In sum, my approach treats PSRs as invested with power through their structural location within the criminal justice system and through the official and epistemological authority of their authors; as technologies of governance, assessing their subjects in terms of their suitability for certain interventions and as documents which have an *active* and *constitutive* function. Below I now develop the analytic method.

Analysing Discourse at the Level of Statements

The level of analysis of PSRs in this study will be carried out at the level of *statements*, a concept which I borrow from Foucault’s *Archaeology of Knowledge* (Foucault 1972). This is done not in order to replicate or extend any precise methodology deployed in the *Archaeology*, which, as a coherent systemic approach is not without criticism (Brown and Cousins 1986), but in the spirit of using his work, as he himself suggested, as a “toolbox”, borrowing ideas, concepts or analyses as one might a hammer or a screwdriver (Foucault 1995:720). Foucault treats the statement as presenting at the level of the “it is said” (1972: 122). A statement is not analogous to grammatical or syntactical structures but rather can be seen as a *functional* aspect of discourse, a function by which discourse-objects are simultaneously constituted and known (Dant 1991:27; Sheridan 1980: 109)⁶⁵. Discourse, then, is not expressed in statements but rather represents a group of statements that may be made. Foucault speaks of a “pure description of discursive events” which seems to suggest a form of textual phenomenology (1972: 27). Leaving aside the possibilities of “pure” forms of analysis, the project of a descriptive analysis of the statements within probation discourse is attractive for several reasons.

Firstly, by grouping statements in terms of certain narrative aims and objectives within the report we may then begin to identify regularities in the ways in which the various objects of discourse within these groupings are depicted and represented and subsequently begin to unpack the regularities and themes which may be discerned within them. Foucault (1991b:75) argues that discursive practices exhibit “their own specific regularities, logic, strategy, self evidence and ‘reason’” and it is through a consideration of the ways that the statements within a PSR exhibit a certain logic or rationality that they can be discussed in terms of their correspondence to or dissonance with the political rationalities of welfarism and neo-liberalism discussed in preceding chapters. Such an analytic of government “attempts to grasp what language makes possible and what it does” (Dean 1999: 63). In this, the research is not adhering strictly to the complex structures and mechanisms of Foucault’s *Archaeology*, but seeks to integrate the three major

dimensions of his work, namely a concern with knowledge, power and ethics. This, in Foucauldian terminology, also must incorporate *genealogy*, the unpacking of relations between truth and power – how what can be said as true is also connected to certain systems of power. Some of this work has been done in the previous chapters, linking political discourses to the practical instances of probation practice. This chapter and the next address a highly specific area of practice in order to foreground instances of political rationality in the individualised discourse of court reports in terms of what they *say* as being true of someone; how they *depict* this as a problem of governance and how the individual is to be *inducted* into an appropriate mode of governance in light of the previous two factors.

The collection of statements will involve focusing upon the way that objects such as ‘offending’ are constructed and constituted according to particular lexicons, vocabularies and logics whose aim is to render the complexities of offenders’ lives and their crime into more simple terms amenable to use in the sentencing process in court through a process of “categorization” (Potter and Wetherell 1987:116). This process of simplification will provide material that will enable the grouping and differentiation of the ways in which particular discourse objects are structured and which will enable the highlighting of patterns or trends in the representation of such objects within reports.

This gives two levels on which analysis will focus. The first is at the level of the “it is said” – the forms and terms used to depict and describe phenomena. These statements, rather than being mere reference to unitary, tangible, phenomena are, within the theoretical parameters of my inquiry, taken as *constitutive* of such phenomena. This entails an unpacking of the logic of the statement -the ways in which a discourse object such as ‘offending history’ is structured into a narrative synopsis. Within this statement one may find various arguments based on particular logics of the individual such as the reasons for offending (causality and motivation), the meaning of offending for the individual (perception, cognition and evaluation) and the pattern of offending behaviour (criminality, social development and adaptation). Within the bland monotony of official reports the mundane nature of much narrative and descriptive discourse may obscure this constitutive function of statements and requires the analyst “to tear them away from their virtual self-evidence, and to free the problems that they pose” (Foucault 1972:26). This involves the analyst in a constitutive act of his or her own, requiring a “constructive interpretation” in the production of one’s own textual account of discourse (Dworkin 1986:62). In order to carry out such an analysis, then, one abandons the search for intentionality and the author as creator of the report and focuses instead upon regularities of discourse, producing “tentative interpretive schemes” which may be used as working hypotheses in order to analyse the discourse in question. Such an approach is well suited for a consideration of discourse in that it is sensitive to the nuances and context-dependent aspects of discourse not open to approaches such as content analysis (Wetherell and Potter 1988: 182-3).

The second level at which analysis can proceed is at the level of the logic of the proposal: in what ways does the report reach its conclusion such that the individual is rendered as

amenable to governmental intervention predicated upon the problematisation set out in the premises of the report (Miller and Rose 1993:79). This examination of the conclusion and proposal is important since it is through such vocabularies and logic that the probation officer's proposal is reached and the proposal, argues Denney (1992:87) "clearly relates to the forms of explanation which have been provided earlier in the report." By isolating for analysis the arguments of pre-sentence reports, we can attempt to make clear "the way in which people are invited or incited to recognize their moral obligations" within the official texts of such reports (Foucault 1984: 353).

This approach then, leaves aside issues of what the author of a PSR *intended* to say and also eschews an interpretation of what the author *actually meant* in writing what she did. Knowledge cannot be "reduced to thinking, thoughts, opinions, ideas and so on, but is best understood as a material practice with definite, public, material conditions of operation" (Kendall and Wickham 1999:42). Meaning should not be confused with authorial intention since "it is inscribed in dialogue, texts and actions...[t]o study meaning means to reconstitute it as the structure inscribed in the products of human activity" (Corradi 1991: 107). It is by the reconstitution of such a structure within a new context of governmental analysis, that the meanings and logics deployed in the PSR can be discussed and compared to the characteristics of welfarism and neo-liberalism. Indeed, Foucault noted that the material nature of discursive statements makes possible their "reinscription" and "transcription" within other discursive spaces and it is my intention to carry out such processes within the discursive space of this research study (Foucault 1972:103). Further, such an approach can also be used to challenge and debate the discursive effects of PSRs, thus enabling the development of a critical commentary upon their contents which does not rely upon intentionality or procedural non-compliance.

Such an approach is not able, however, to disassociate itself from the implications of its own logic and its opposition to more traditional empirical approaches also leave it open to critique. The focus upon an intelligibility of statements and fragments of discourse operates in a manner much different from the more traditional methods of social science involving the enumeration and comparison of frequencies across a series of variables. Crawford argues that "it is difficult to quantify and generalize from discourse analytic work...A related problem is that discourse analytic work is open to alternative readings and thus implies a lack of closure...[D]iscourse analysis privileges an 'expert' researcher who interprets the talk of others." (Crawford 1995: 174). Answering such criticism requires an emphasis upon the inherently political nature of discourse analysis, the concern to highlight and bring out the problematic as discursive objects and clusters, to be removed from the coherent flow of discourse and to be isolated and inspected in terms of their logical assumptions, presuppositions and functions. The analysis of discourse requires a political intervention, one that is informed by, and implicitly recognises, definite logics and theoretical assumptions and which go beyond providing a mere commentary or "common sense" summary of a piece of text. Such an analysis, says Van Dijk, "...should be to provide insights into structures, strategies or other properties of

discourse” in ways which bring out characteristics of these properties not readily available to those who routinely produce or consume such discursive products (Van Dijk 1997: 5). The contestability of such a politicised analysis is constantly to be acknowledged if one is to use the results to effect change. Rather than producing – as for example do Her Majesty’s Inspectorate of Probation – standardised assessments of “quality” through the use of questionnaires aimed at eliciting the extent of procedural compliance to various aspects of National Standards, one aims instead to produce tentative accounts which can be used in dialogue with practitioners, recognising that meaning is “never fully referential and is always contestable” thus opening the route to a dialectical engagement with report content and its “potential but not necessary” effects (Purvis and Hunt 1993:485; 497).

The research approach here aims to contrast two forms of governmental rationality with the discursive structures of PSRs but it is also apparent that this approach presents a way of *politicising* these reports, treating their statements not as accounts which are more or less well written but instead dealing with them in terms of their discursive functions and effects, suspending their veridical status by taking as an underlying axiom that “[t]he way in which power is exerted to produce knowledge effects becomes visible once the issue of the truth of a statement or group of statements is suspended” (Dant 1989: 227). Parton likewise argues that an analysis of discourse will “provide insights into the nature of contemporary policy and practice itself” (Parton 1994:13).

The terms and concepts of official discourse, then, provide the probation officer with a *governmental language* through which the domain of crime and criminality can be known, debated and discussed (Dean 1995: 560). Such governmental discourse renders the “objects of government thinkable in such a way that their ills appear susceptible to diagnosis, prescription and care by calculating and normalizing intervention” (Rose and Miller 1992: 183). Such a discourse is inscribed in the pre-sentence report, a technical document which can be seen as a *pre-governmental assessment* in which various aspects of the individual are weighed up and judged in order to discern the nature and extent of intervention necessary to assure appropriate self-government. Liberal government in general presupposes the possibility of an individual with the capacity for self-government and, where such a capacity is lacking, remedies must be taken to address this inadequacy. However, whilst the individual forms the basis for differing modes of liberal thought, there are distinctions to be made between welfarist and neo-liberal modes of governmental discourse.

Templates of Government: Welfarism and Neo-Liberalism

Having identified the ways in which the field of objects in the PSR is discursively constituted, I then want to explore the resonances and dissonances between these objects and the characteristic factors that I have argued shape the focus of the welfarist rationality. To do this systematically, I have below set out a schematic diagram of the key characteristics which denote welfarist and neo-liberal discourses. The descriptive analysis which follows will discuss to what

extent the discourse in PSRs diverges from welfarist logics and the degree to which the PSR suggests a shift toward the neo-liberal approaches. The concepts drawn from each of these two rationalities will function as “sensitizing concepts” or analytic devices, through which the reports can be read (Hoonward 1997).

In order to analyse pre-sentence reports in terms of their deployment of concepts of welfarist or neo-liberal rationalities, this section sets out the characteristics of both these discourses. The aim of such a schematisation is to enable analysis to investigate the extent to which the data embody these two categories of discourse rather than to subsume the data within those categories (Schlegoff 1992:224). In order to make this distinction clearer and to unpack the logics underlying each of these categories, I shall sketch out what I take to be some of the dominant assumptions of welfarism and neo-liberalism, particularly where these are likely to be brought into play in probation practice. This sketch or diagram of the conception of the individual considers the concepts of these political rationalities in terms of an individual’s *behaviour* – its causes, origins or precipitating features; in terms of *biographic problematisation* – how is the individual’s life and his or her criminal behaviour rendered into a problem within the small discursive space of the pre-sentence report, what diagnostic logics are used to represent the person as both problem and solution; what *mode of intervention* is indicated as a result – in terms of its regime of practices, its technical aims and objectives and the expected resultant outcomes and finally, what relationship between individual and society do these representative categories stress or intimate?

Welfarism, arising from the growth in concerns about the management of the health and well being of the population, has, as I have described earlier in this study, manifested an overall concern in the security of individuals, endeavouring to spread and share the risks and contingent circumstances which may impinge upon the quality of life of citizens in modern society through the establishment of a series of measures designed to promote and sustain various aspects of social well-being. These processes of security bind the individual into the collectivity through health and employment insurance, pensions, sickness benefits and so forth. The individual benefits through the network of expert assistance, guidance and intervention delivered as part of the citizen-state relationship embedded in the welfare state (Rose 1993: 291). The individual citizen is expected to contribute both fiscally (where possible) to the maintenance of this relationship and through certain patterns of behaviour –law-abiding comportment, partaking in waged employment, enacting appropriate conduct in child-rearing and the support of the family. Where such behaviour is lacking, citizenship may be restored to that individual through the deployment of appropriate expert assistance, tutelage or other forms of intervention designed to eradicate as far as is possible, the stumbling blocks to worthwhile civic conduct.

The behaviour of individuals, then, within the discourse of welfarism, tended to be treated in a quasi-pathological manner utilising a vocabulary heavily reliant upon epidemiological terms. The individual has been construed as a “patient” rather than an “agent” (Peters 1960). As such, behaviour tends to be treated as *determined*, with an emphasis upon the

factors that have caused, driven or shaped the individual's affective capabilities in such a way that there has been a failure to fully develop the capacities and dispositions necessary to full civic activity. Such a positivistic perspective is highly reliant on measures of *deviance*, adjudging conduct in terms of its resonances or dissonances of what is taken to be the appropriate yardstick by which normal behaviour is assessed. As a result, intervention aims to rectify the problems which have prevented the individual from becoming a good, normal citizen. Since these problems are taken to result from intra-psychic dynamics, the forms intervention takes tend to be predicated upon "confessional" techniques of the self, especially those of the "psy" disciplines, working with the individual to painstakingly guide her to an understanding of the cause of her problem. This model was particularly pronounced in the "treatment" model of probation employed between the Second World War and the mid 1970s. A secondary strand to this welfarist analysis can be added in which the individual psychic determinants are replaced by *social* determinants. Thus the causes of crime or anti-social behaviour are located within the social and economic structures within which the individual exists. The problematisation of the individual offender, then, pertains to the individual's failure to take part in, and benefit from, the apparatuses of security that traverse the landscape of social and economic relations. Interventions will focus upon the resolution of contributory factors identified as contributing to deviant actions. Through such interventions, the individual will come to recognise the problematic nature of her behaviour and, by committing herself to eradicating the impact of such a problem, will align herself with the welfarist nexus of appropriate, responsible behaviour. The overall aim will be one of *guidance* toward such a self-realignment, enlisting the support of other agencies as required. As the Morison Report put it, the aim of probation will be "to encourage people to help themselves rather than be helped; *to co-operate rather than to obey*" (Home Office 1962: para 55). By engaging in the activities by which citizenship confers security, authority becomes a part of the individual's practices of self-governance.

In contrast, the neo-liberal conception of the individual offender offers a different perspective in which the offender is depicted as "agent" rather than "patient". Neo-Liberalism deploys a governmental style organised around *economic forms of reasoning* – "an analytical language of risks and rewards, rationality, choice, probability" as opposed to the social and legal approaches of welfarism (Garland 1997: 185; Burchell 1991). Neo-liberalism operates across a baseline assumption of meritocracy: that success or failure is predicated upon one's abilities to operate within the competitive environment of a market-driven world. Normality is thus engaging in, and pursuing, such behaviour across the life-course. Individual actors are assumed to possess a certain rationality in which self-oriented motivation is functional to the decision based nature of successful social and economic life. Individuals act in their own self-interest, securing outcomes in the selection of outcomes in order to create identity and personal and familial well-being. Such an explanatory discourse is so prevalent in contemporary social scientific discourse that it has been described as "colonising" them (Archer and Titterton 2000).

Given that Neo-Liberal governance works to “*actively* create the conditions within which entrepreneurial and competitive conduct is possible”, interventions will, where considered viable, be aimed at the restoration or inculcation of the personal skills necessary for the development of an entrepreneurial mode of self-governance (Barry et al 1996: 10). Interventions will thus focus upon re-skilling or en-skilling those who have been found lacking in such capacities. For offenders, however, the identification of a need for such an improvement of their decision making processes will be counterbalanced by the increased emphasis placed by neo-liberal practices upon the assessment of *risk*. Interventions may address risk in various ways: quasi-therapeutic techniques may seek to restore skills denied to individuals through faulty socialisation (although the role of antecedent events is played down in favour of an increased emphasis upon the present); community service may offer a means of compensating the harm done to the community whilst electronic monitoring may offer increased surveillance for those at greatest risk of criminal behaviour. In all these approaches, however, there is little emphasis upon the affective or emotional processes and much more upon the behaviour which is being problematised as constituting “risk”.

These interventions are aimed at lowering the risk posed by individuals either by reducing ‘risky’ behaviours such as alcoholism, drug use, unemployment or anti-social behaviour, or by eliminating them from communal areas partially, as in the case of electronic monitoring, or completely, through the use of prison. The allocation of resources in proportion to the presenting risk levels of offenders has been identified within the criminal justice literature as representing an established principle: the ‘risk principle’ (Andrews and Bonta, 1994).

Interventions, then, to the extent that they display tenets of neo-liberal governance, will tend to focus upon risk as a means of both problematisation and in terms of identifying suitable interventive measures: “a whole array of programmes for their ethical reconstruction as active citizens, training to equip them with the skills of self-promotion, counselling to restore their sense of self-worth and self-esteem, programmes of empowerment to enable them to assume their rightful place as the self-actualising and demanding subjects of an ‘advanced’ liberal democracy” (Rose 1996b:59-60). Outcomes of such interventions will be the display of pro-social behaviour and the enlistment of the individual in a project of self-governance through the use of newly acquired or enhanced social skills in negotiating the neo-liberal terrain of choice, autonomy and self-interested motivation.

Figure 1, below, sets out in schematic fashion some of the broad assumptions of the welfarist and neo-liberal discourses. This schema forms the basis for the analysis of pre-sentence reports. To an extent it is clear that the dichotomising of these two rationalities is to impose an artificial division upon what are two extremely broad patterns of political and intellectual thought. Nonetheless, although the transition from welfarism to neo-liberalism is marked by overlap, intersection, mutation, hybridisation and all manner of situational contingencies, any

attempt to study transition and change must try to set out what such change involves, and must, of necessity, map out the indices which will be used to posit such change.

Figure 1: Characteristics of Welfarist and Neo-Liberal Political Rationalities

	Welfarism	Neo-Liberal
Individual Biography	Individual as Citizen. Shaped by processes of socialisation. Importance of family relationships. Problems of modern society impact upon individual & impact upon ability to maintain appropriate behaviour, thus requiring expert assistance and help.	Individual as autonomous with duty to 'care self' within context of market-driven choice. Individual = 'enterprising self' whose skills negotiating life-course are the key to success.
Offending Behaviour	Result of either inadequate socialisation or impaired affective bonds or impact of industrial society upon individual, her relations with others & society. Treatment/social justice: both lead to expertise as guiding offender away from crime.	Offending result largely of choice and malintent. Some individuals 'risky' in terms of persistence & threat to others and society. Offending sometimes result of faulty logic & decision making resulting from impaired or underdeveloped cognitive skills. Others need to be incapacitated (cost of crime).
Problematisation	Inadequacies in carrying out requirements of citizenship & thus breaking the individual-state compact of welfare.	Inadequacies in appropriate autonomous behaviour in general or specific settings & circumstances.
Solution & Mode of Governance	Expert help: realignment of individual's subjectivity by removing obstacles to social/economic participation.	Incapacitation for most risky (prison, electronic monitoring). For others, cognitive skills could be re-skill or upskill individuals in appropriate neo-liberal behaviour – thus equipping them for competition of life.
Wider Context of Intervention	Intervention part of nexus of rights and obligations bestowed by citizenship..	Identification of risky populations. Crime reduction strategies. Prudent citizens. Wide range of facilitating citizens to operate freely in the market.
Role of Expertise	Diagnostic and ameliorative.	Predictive and allocative techniques based on actuarial risk measures. Amelioration where appropriate using certified techniques.

Sampling Issues

Sampling in qualitative research and issues of the ability to generalise from one's data to wider populations is frequently not an issue of concern in the way that it is with those undertaking quantitative research. In quantitative approaches, sampling is an important technique in drawing a sample of cases, with the technical approach underlying the sampling process designed to generate a sample which is representative of the population from which it is drawn. The statistics generated in analysing such a sample – for example the mean or standard deviation – represent *estimates* of the population parameters, the actual values of the population mean or standard deviation if it could be known in its entirety (Newton and Rudestam 1999). The accuracy with which a sample is constructed in terms of its ability to represent, as it were, in microcosm, the wider population from which it is taken, enables the level of confidence in the results obtained to be calculated in the forms of confidence intervals around a particular statistic. For example a sample may indicate that 47% of British voters would favour a party pledged to tax cutting policies. Such a precise figure is unlikely to be correct, but the level of confidence in such a result can be calculated to give a result indicating that between 40% and 54% of voters would prefer such policies (Newton and Rudestam 1999). By calculating the sample size needed

to ensure findings of statistical significance, researchers can ensure the *statistical power* of their analysis to reject or accept their null hypotheses (Kraemer and Thiemann :1987). In quantitative forms of enquiry, then, the sample should be drawn in such a way that all members of the population have an equal chance of selection, thus minimising any bias that might be introduced into the sample. Sampling procedures thus aim to minimise the error level which may distort the resulting statistics obtained from it. If such a procedure is carried out correctly, then the amount of error in the sample is due only to random chance and can be calculated to certain confidence limits, as discussed above (Kerlinger 1987). A sample of 50 cases is considered “large enough” to enable the calculation of confidence levels on statistics obtained from that sample (Borhnstedt and Knocke 1994).

The technical nature of sampling, then, pertains to the *external validity* of the findings of an analysis of the data. Inherent in the notion of external validity is the ability to be able to *generalize* from one’s findings and often – particularly in the case of experimental research – to be able to *replicate* those findings. *Generalizability* involves the question of “to what populations, settings, treatment variables, and measurement variables can the effect be generalized?” (Campbell and Stanley 1964), whilst Guba and Lincoln argue that “[t]he heart of external validity is replicability. Would the results be reproducible in those target instances to which one intends to generalize..?” (Guba and Lincoln 1982:123).

Many qualitative researchers have avoided this issue of generalizability entirely – although there has been a growth of interest in the subject in the last decade or so (Ward Schofield 1993:201), whilst others actively reject the goal of generalization (Denzin 1983: 133-4). Broadly speaking, the qualitative researcher is working with far fewer cases than would his or her quantitative counterpart and the objectives of the research are also somewhat different. Henwood and Pidgeon hold that

Sampling is an important consideration in qualitative research. Since the goal is the elaboration of a conceptually rich, dense and contextually grounded theory, there is no compunction to sample multiple cases where this would not extend or modify emerging theory. Sampling is therefore driven by theoretical concerns (Henwood and Pidgeon 1993:25).

In a similar manner, Ward Schofield argues that the goal of qualitative research “is to produce a coherent and illuminating description of and perspective on a situation that is based on and consistent with detailed study of that situation” (1993: 202). She continues this argument by asserting that the elaboration of theoretical concepts and description of the subject matter, tailored as they are to the particular concerns of the researcher, mean that such qualitative researchers “do not expect other researchers in a similar or even the same situation to replicate their findings in the sense of independently coming up with a precisely similar conceptualisation” (1993:202).

The Research Sample

The issue of how far my findings will be typical of pre-sentence reports seems to me to be of importance, given that I have argued that my analysis is informed by theories of governmentality that themselves pertain to wider currents of thought in society. Clearly the ability to use inferential statistics to calculate the confidence one may have in one's results and thus to assess the extent to which generalisations may be possible, is not open to the qualitative researcher. Instead of a reliance upon analysing various population estimates in order to make inferences about wider populations, I argue that my results, drawing upon the Foucauldian framework for an "analysis of government" set out above, can be seen as tentatively applicable to wider populations and offer what Goetz and LeCompte refer to as "comparability", by which they intend

the degree to which components of a study – including the units of analysis, concepts generated, population characteristics, and settings – are sufficiently well described and defined that other researchers can use the results of the study as a basis for comparison (Goetz and Le Compte 1984:228)

Thus the findings presented in the following chapter and the conclusions drawn from them should not be seen as attempts to provide exemplars of some universal laws of discourse (Taylor 1979: 153). As I have already outlined, discourse analysis is a political activity and is carried out with an explicit recognition of the assumptions and theories which inform a particular inquiry. The analysis of government, moreover, seeks "not an exhaustiveness of evidence but an intelligibility of problematisations" (Osborne 1999: 175). The foregrounding of how individual offenders are articulated within official discourse as problematic enables new discussion and debate to be opened up as to the implications of such problematisations and their political resonances. The raising of such debate opens new avenues along which other researchers may decide to pursue similar or dissimilar strategies. However, the creation of new perspectives for debate is somewhat akin to viewing an ambiguous figure in which the viewer may perceive widely different images, for instance those of an old woman and a young girl (Spinelli 1989). Some viewers may see one and some the other and yet others both. However, for those who perceive only one of the two possible figures, once the other alternative has been pointed out to them they can never go back to only seeing that image that they could make out previously. Introducing new terms of debate then, impacts on and affects the field of debate in an area even where the new perspective is actively rejected by those working from other viewpoints.

In terms of the sample analysed in the next chapter, the pre-sentence reports were taken from a sample selected for an internal probation service inspection in Kent. The reports were randomly selected using SPSS software from a data base of some 5000 reports prepared during 1999 and are, statistically speaking, typical of that general population – within the confidence levels which pertain to a sample of 50 cases drawn from a population of 5000. These are then, *reasonably* typical reports, focusing upon indictable offences – that is to say somewhat more

serious offences than, for example, traffic or other summary offences⁶⁶. The sample size of 50 seems to offer a reasonably representative set of data from which to work, given that the issue of sample size in discourse analysis is not a matter of concern in the same way as it is in statistical analysis – as I have discussed above (Wood and Kroger 2000:81). This is in part due to the fact that one's analytic units are instances of discourse rather than participants (Potter and Wetherell 1987). Given a set of discursive exemplars with which to work, the major aim of such an analysis of discourse should be to set out one's analysis in a "coherent" manner (Potter and Wetherell 1987:170) and to produce an interpretation that is "plausible and persuasive" (Tracy 1995:9). The aim of discourse analysis, then, involves the production of analytic arguments and assertions which are open to challenge and contestation in terms of the assumptions and approaches deployed in the production of such an analysis. Such an analytic approach involves "the representation or reconstruction of social phenomena" (Coffey and Atkinson 1996:108). In such an approach,

relying upon correspondence with the empirical world as the ultimate arbiter of truth is both impractical and untenable. Rather, the more pragmatic argument can be made that the outcomes of research will be evaluated in terms of their persuasiveness and power to inspire and audience. (Henwood and Pidgeon 1993:27)

The sample used in this study, then, offer a random set of reports the discursive features of which are the basis for analysis. To the extent that the sample was drawn randomly, it would be possible to calculate confidence intervals for statistical results. Given the nature of discourse analysis, however, such precision is not an essential feature of analysis: the analytic units of the research are found within the PSRs and these are written within a uniform format, addressing similar issues relating to each offender – the *action* of representation follows a similar format in each case. The issue, then, of whether these offenders are statistically representative of the general population of offenders or not is not of primary importance, although the random nature of the sample enables one to say that all reports from which the sample was drawn had an equal chance of being selected. The overall aim is the elicitation of theoretical categories from the statements provided in the reports and the creation of a sustainable argument through a reinscription of the arguments of the reports within a theoretical elaboration that links the empirical with the theoretical.

Analysis

The reports were analysed using a data collection instrument to collect particular examples of certain topics, themes or categories. This instrument is reproduced as appendix 1. Once collected, the statements were coded, entered onto computer into a word processing package and were sorted by various categories assigned to them. Further analysis then took place, assigning new categories or conflating several into a more general one with the aim, as Wood and Kroger put it, being "to make the data more manageable for formal analysis" (Wood and Kroger 2000:87). The statements were sorted and re-sorted according to the category or sub-

category assigned to them prior to the researcher making notes and beginning the task of setting out an analytic description of these statements. After these changes the data were then sorted again and subject to further scrutiny, producing a substantial text based upon the smaller texts of the statements.

The basic conceptual model for my analysis was that the PSR offers a logically structured sequence of information to its intended audience (sentencers) with the aim of serving a particular function: that of suggesting a suitable disposal, given the nature of the offender, his or her crime and the circumstances of the offence : “structures are a way of achieving both content and function” (Wood and Kroger 2000:93). The basic initial structure was taken as being shaped around the following: given this person (*who*), the nature of his or her offending (*what*), and the reasons behind this offence (*why*), what needs to be done, what factors need to be addressed, to what extent will the person engage in such a corrective or ameliorative intervention? (the *nature of how the individual is to be governed and how self-government may be established*).

Beginning with this process of “categorization” (Potter and Wetherell 1987:116), more precise analytic categories were produced. For example, in the case of the individual’s attitude toward the offence, statements tended to be structured around issues of responsibility, culpability, contrition and co-operation. These lower level codes could be generally subsumed into a wider category of ‘Agency’, in that they pertained to the individual’s role in the offence and the way that individual perceived that role. Another set of categories pertained to what was wrong in the individual’s life, factors that served to undermine pro-social and law-abiding behaviour . Here there were multiple sub categories, such as traumatic experience in early life, a disturbed childhood, affective difficulties and experiences, problems with employment and so forth. This disparate grouping of phenomena which ultimately could be classed as linked to *stability* in the individual’s life. Whilst individually such categories were *descriptive*, they also could be usefully grouped under a wider analytic category of indicators of a need for governance: the identification of factors that explained or indicated what prevented an individual from more ‘normal’ behaviour.

The wider analytic groupings, then, were derived from the empirical data drawn from the reports but were also shaped by the theoretical vocabulary and rationale of welfarism and neo-liberalism which has been discussed and developed in the preceding chapters. The analysis proceeded from the identification of fairly specific groupings of statements through to their subsumption within wider theoretical bandings. These were then used to examine how the logical structure of the reports drew upon informational statements to inform the proposal. The logical framework of the report itself offered up a wider category of a ‘need for governance’ within which other theoretical categories could be seen to function in terms of identifying and suggesting both what that need was and what its solution(s) might be. The analytic categories and main findings of the final analysis of this data are presented in the next chapter.

6 The Logic of Pre-Sentence Reports

In this chapter I analyse various aspects of the pre-sentence reports in my sample. These are analysed in terms of their depiction of various dimensions of the lives of the individuals who are the subject of such a report. Since PSRs are prepared upon people who have pleaded guilty to an offence, the extent to which they construct that individual by the imposition of certain representational categories may seem to be constrained due to the co-operation of the individual in the production of the report. However, the logics and arguments within these reports, I suggest, operate in a far more subtle way than to utilise crude stereotypes conducive toward harsher or more lenient sentences. In my depiction of the discourse of PSRs which I set out below, I argue that these reports function through an assessment of the need for government, the suitability of an individual for particular interventions and the intensity of governance that will be necessary to introduce or restore 'normality' to that person's life. Within such an assessment, reports utilise certain broad categories which address the extent to which an offender evidences responsibility; the extent to which he or she may be affected by certain life experiences, habits or other deleterious circumstances and events; the extent to which the individual's offending appears conditioned, shaped or linked to certain predisposing 'risky' factors and the extent to which such behaviour is 'habitual' or atypical of the individual's lifestyle. These broad categories form the premises upon which the logic of the PSR is founded and enable a final proposal to be arrived at. Given that PSRs seem to exert considerable influence upon the sentencing process in terms of their "take up" or concordance rate (Gelsthorpe and Raynor 1995), it becomes clear how certain relations of government are textually mediated (Smith 1990:4). By the identification of such textual mediation in respect to forms of governance, it will be possible to depict the welfare-neo-liberal distinctions depicted in the previous chapter in ways which demonstrate the way that governance functions across the level of political discourse, institutional practice and individual subjectivity (Rose 1992:143-45).

Agency

The issue of agency emerged upon reading the reports as a central feature of the section of the report dedicated to an analysis of the offence. Clearly a key feature of a report whose aim is to make clearer the underlying factors pertaining to an offence will be agency – the extent to which the individual acted in an intentional and conscious manner. The fact that an offender is considered able to stand trial and to plead guilt or not guilty is in itself an official acknowledgement of that individual's agency. However, in terms of offending, the degree to which such behaviour was spontaneous or planned in advance is open to considerable argument and variation in the way it is interpreted in the pre-sentence report. The relevant part of National Standards pertaining to the offence analysis stipulates that the PSR should highlight

“key features of the offence(s) and its circumstances (without re-stating all the evidence already before the court) which are likely to be relevant to the court in reaching a judgement about its nature and seriousness; and to assist the court’s understanding of **why the offender committed this offence at the time.**” (Home Office 1995: para 2.12, emphasis in original).

The question of “why” would seemingly lend itself to a causal analysis of the offender’s behaviour, with causes identifiable as either residing in a welfarist, quasi-pathological discourse or in a neo-liberal vocabulary of choice and rational behaviour. In fact, in only a few cases was the “why” a key structuring feature of the account. Probation officers tended not analyse the offence so much as the offender’s account in terms of admission of culpability and responsibility. There was a heavy use of reported speech – some of which may be due to the fact that a report has been written without the benefit of Crown Prosecution Service documentation such as lists of previous convictions and witness statements. This was not the case in all such reports, however and many officers often merely offered the offender’s account of his or her actions although some did seek to make clear, at least, the fact that they were relying on a version of events whose veracity and reliability might be somewhat open to dispute. In some, but by no means all, cases, officers commented on contradictory or problematic issues contained in these accounts. Greater comment was made about the extent to which the offender acknowledged his or her role in the offence and credit given for the acceptance of responsibility. The officer’s commentary upon the offence, then, formed a dialogue around the issue of *agency*, the capacity of the offender to recognise his or her volitional commitment toward a certain course of action and an ability to recognise and renounce the adverse consequences of such actions upon others.

A key issue centred around this notion of agency, namely the extent to which the offender recognised his or her guilt and the ways in which he or she sought to explain such behaviour other than as the result of a rational course of action. These explanations were extracted from the data and were grouped together by the themes which characterised them. In some cases the explanations were apparently almost verbatim reports of the offender’s account, in others, the probation officer took a more prominent role, qualifying and highlighting aspects of the offender’s account in order to focus upon salient issues. The first series of statements was grouped around a theme of *responsibility* in which “ownership” of the offence – the acceptance of culpability for one’s behaviour and its consequences- was expressed.

Agency: Responsibility, Culpability, Contrition

It was clear from the reports that credit was allocated to offenders in cases where culpability was admitted from the start. The discussion of the offender’s role in the offence, whether reported almost verbatim from the offender’s account or whether qualified by the expert opinion of the probation officer, formed a central premise for subsequent discussion as to the appropriate form of sanction for that individual. This initial problematisation of the offender’s role in, and attitude toward, the offence provided a “primary definition” of the offender from which further conclusions could be drawn as the report went on. Such a primary definition “sets

the limit for all subsequent discussion by *framing what the problem is*. This initial framework then provides the criteria by which all subsequent contributions are labelled as “relevant” to the debate” (Hall *et al*, 1978: 59, [emphasis in original]). The initial question then, is to what extent does the offender “own” his or her offence and recognise the harm done as a result of his or her behaviour. Such recognition was expressed in reports along a continuum of acceptance – denial. Where offenders accepted their role in offending and admitted it, a rational model of action is portrayed which to a large extent is resonant with aspects of neo-liberal discourse discussed earlier.

Early acceptance of guilt and co-operation received particular credit:

1. “... *admitted his guilt as soon as possible..*” (report # 4)
2. “*she co-operated fully with store security and police*” (report # 13)
3. “*fully admits these offences*” (report # 15)
4. “*he has been extremely foolish in committing these offences, which he now fully accepts*” (report # 29)
5. “*spoke at some length about the offences, not seeking to deny or diminish his actions, but to confirm and clarify details*” (report # 49)
6. “*openly admitted these offences and made no attempt to conceal his behaviour*” (report # 50)

These excerpts set out an individual who is able to “put their hand up” and admit they have done wrong. In the above examples we see the beginning of behavioural narratives based upon a willingness to comply with authority, to not waste time with denials, to fully admit one’s involvement in the crime, to provide full information and details about one’s actions and to take responsibility for wrong-doing. The offender has confessed without recourse to excuses or denials, displaying at least a modicum of insight and truthfulness.

Further mention of a willingness to avoid excuses, blaming others or denial and minimisation of one’s behaviour typified these explanations predicated upon confession and insight. We might say that such depictions are characteristic of a “responsible” offender:

7. “*he did not seek to negate responsibility for his actions by blaming them upon his past drug use*” (report # 1)
8. “*In my view he was able to describe his [financial] problems without minimising his responsibility for the offences or their seriousness*” (report # 22)
9. “*He did not seek to excuse his behaviour on the basis of poor temper*” (report # 45)

In the above three examples it can be seen that such “responsible” offenders are portrayed as setting aside personal problems which might have been drawn on as providing at least partial justifications for their offending in favour of a more rational model of action. Other accounts, such as the examples immediately below, portray offenders as taking the blame without recourse to excuses and evidence moral evaluations of their behaviour.

10. *"To his credit, he has never denied his behaviour or attempted to excuse his actions"* (report # 25)
11. *"he knew what he was doing was wrong and said he took a chance without thinking of the consequences of his actions"* (report # 40)
12. *"he did not seek to excuse his behaviour and accepts that his offence was 'stupid' and wrong"* (report #49).
13. *"she has been candid in acknowledging...she knew that her actions were wrong"* (report #50)

This theme of responsibility was also reinforced by discussion of the extent to which the offender was sorry for his or her actions. Various depictions of remorse and contrition were set out:

14. *"fully accepts how foolish and potentially dangerous his actions were for other road users"* (report # 9)
15. *"He is appropriately contrite"* (report # 28)
16. *"His sense of remorse at having stolen the items appears to be genuine"* (report # 28)
17. *"appears to be genuinely contrite and disgusted with himself and the potential risk he posed to others"* (report # 46).
18. *"I have formed the view that Mr. M genuinely regretted what he had done and had a clear idea of the risks he posed.."* (report # 48).

The first example suggests the recognition by the offender of the potential consequences of his behaviour, which he is able to "accept" – thus evidencing his ability to recognise rational and responsible behaviour. The second example presents the notion of "appropriateness" such that the reader is assured of the requisite amount of remorse for the offender's actions. In the third and fourth examples remorse is depicted as "appearing to be" genuine, giving some room for the statements to be considered as 'probably' true, whereas other statements are given without any qualification, with the officers' use of a veridical discursive tone. The final statement also depicts the offender as having recognised his behaviour as "risky" – an identification which also forms part of the probation officer's task and which suggests the framing of the offender's account within the vocabulary of probation discourse.

Allied to conceptions of responsibility and an acceptance of blame are statements linked to a desire to make restitution. Such a wish certainly seems in line with the model of a rational economic individual said to characterise neo-liberal discourse. The use of such statements seems to be as a means of reinforcing and restating the offender's acceptance of wrong doing and his or her wish to redress this. Indeed, these statements often contained an adjective ("anxious", "adamant") which emphasised the offender's desire to make amends by way of a financial payment in line with the severity of the offence – a very liberal model indeed.

19. *"he is now anxious to offer financial recompense"* (report #1)

20. *"understands he could be required to pay compensation and is adamant he would comply..[and]..welcomes the opportunity to make reparation to the community"* (report # 5)
21. *"has indicated his willingness to pay a financial penalty commensurate with the seriousness of the offence"* (report # 9)

Overall then, the initial consideration of agency in respect of the individual's offending behaviour involved a focus upon confession, compliance, contrition and compensation in which the individual was given credit for displaying agency in the commission of the offence – insofar as he or she was then able to own up to this behaviour, to provide a full account of offending in which guilt was acknowledged, harm regretted and compensation offered. This rational offender I shall refer to as the "responsible offender".

The responsible offender, then, is attributed agency in terms of the commission of the offence and in terms of the ability to recognise its moral and social impact. A further potential target of offending behaviour was the offender her/himself. The consideration of this theme evidences somewhat the notion of the "enterprising individual" of neo-liberalism, whose concerns are with responsible, self-interested behaviour, in the accumulation of cultural capital and material and personal well-being. Within statements relating to the deleterious consequences of offending upon the offender's life-chances, consideration is given to the ways in which the enterprising or responsible individual is liable to be disadvantaged by his or her own behaviour.

22. *"fully realises the impact of the offence upon his employment and future prospects"* (report #4)
23. *"needs to anticipate the consequences of behaviour in the future...if he is to regain full control of his life and pursue a legitimate future"* (report # 24)
24. *"by his own admission he has also failed to date to put his life on a sound footing by gaining economic independence or constructive employment"* (report #50).

Example 22 sees the offender credited with applying himself to recognising the possible deleterious consequences that his offending is liable to have upon future employment prospects. The offender is thus cast as recognising himself as the victim of his own actions, with such actions impacting upon his ability to take an economically autonomous role in society. Similarly in example 23, the offender is represented as needing to develop his consequential thinking in order to avoid further damaging his capacity for leading a stable and normal life in the future. The offender's role in this is demonstrated by the emphasis upon his regaining control of his life – placing the onus upon the offender to act. In example 24, the offender's life as economic actor is summarised to date and is found wanting. The probation officer emphasises this fact by reference to the offender's own admission to a failure to take up respectable and stable economic activity. There is the implication here that this will continue unless something is done to address it.

Self-Critique

Linked to issues of contrition and responsibility were statements which depicted the offender's self-critique in terms of his or her offending. In such statements, offenders move beyond admission of guilt or recognition of consequences and take up a perspective from which to criticise their actions. The offender in such statements almost becomes a third party, joining the probation officer in denouncing the offence or offences.

25. *"Mr P stated that he was upset that other people had been inconvenienced and their property damaged..." [he]... "stated that he was disappointed in himself."* (report # 5)
26. *"Fully acknowledged such offending was unacceptable."* (report #5)
27. *[she] "...can hardly believe what she has done and she thinks her offending is "horrible, really horrible..."* (report # 41)
28. *"I gained the impression of some one who is very angry about himself and embarrassed about his behaviour."* (report # 48).

In example 25, the offender takes a distanced view as a third party, treating his own behaviour as an exemplar of wrong-doing. There is no agent in this account: the offender condemns behaviour, not his own actions although he then recognises his lack of appropriate behaviour and criticises himself *from an appropriate subject position*.

In the next statement, the offender is credited for his forthright acceptance of the unacceptability of his behaviour. In example 27, the woman strongly denounces her behaviour almost from a position of incredulity. The next example, number 28 gives a strong feel to the offender's agency in terms of his anger and shame about his behaviour. In each case these statements occur in the context of demonstrating that the offender in no way condones his or her behaviour and is willing to take up an appropriate position from which to condemn it.

Identifying Indices of Governance

The depiction of the individual is, of course, at the heart of the PSR: the sentence of the court is an individualised means of dealing with the deviant individual. The representation of the individual presented in pre-sentence reports focuses to a large extent on the identification of what is 'wrong' in their life. The model of the offender which emerges from such a depiction is clearly highly relevant to my concern with identifying elements of welfarist or neo-liberal discourse. Such a model of the individual will emerge, then, from the ways in which PSR writers draw upon the contextual aspects of the individual's life in order to make sense of the offence or offences. The PSR author, in representing the individual to the court, is of course working within the parameters of National Standards. Such information is, according to National Standards,

"to give a concise assessment of the offender's personal and social circumstances which could assist the court in deciding on the suitability of relevant sentencing options in the case concerned (Home Office 1995: para 17).

National Standards stipulate that a PSR writer should, in recording personal or social information,

“be selective, focusing upon information relevant to the offending behaviour (or any pattern of it); to the likelihood of further offending; and to the offender’s capacity or motivation to change..” (Home Office 1995: para 2.21).

Within the sample being studied, there was considerable variation in how such information was presented. Some reports made use of personal information in a way which did not so much relate this information to the offence or pattern of offending as set it apart from that behaviour. The overall tenor of the way in which the individual was represented as a *person* tended to revolve around themes which pertained to what one might term *social stability* – or a lack of it. Such stability was, as I discuss below, evidence of – both positively and negatively - social and economic *competency*. These themes related to past and present affective, developmental and emotional experiences, material circumstances, behavioural patterns and rationality. Below I discuss these themes in terms of the way in which they represent patterns of stability or instability in an individual’s life.

Early traumatic Experience

In contextualising offending by the use of early and traumatic life experiences, probation officers draw upon welfarist models of causality in that such experiences are seen as having deleterious effects upon later conduct. Example 29 links a whole series of such experiences together, creating a picture of the individual as unstable in his social comportment and therefore not wholly responsible for his behaviour. Example 30 records sexual abuse as having had a similar impact, although the issue is not entered into in any subsequent detail.

29. *Alcohol dependency. [Has lived] “transient lifestyle” with “trauma” of family bereavement, abuse by parents and history of mental illness. (report # 10).*

30. *Victim of sexual abuse as a child whilst in LA care. (report # 35)*

Whilst such early experiences are offered as, if not explanations, then certainly contributory factors, the individual may also be shown as having achieved some degree of control and stability in his/her life. The man in example 31 is depicted in terms of early traumatic experiences leading to imprisonment at a young age which then have been somewhat alleviated by the development of affective ties and domestic responsibility, thus presenting in effect, a synoptic balancing act between positive and negative experience although with an indication of some progress toward social competence in terms of the establishment of a relationship:

31. *[In care 8-18. Been in YOI and ended up homeless] “Later on a period of stability occurred” [had a relationship]. [Met current partner and had a baby. But “friction” since child born and offences committed during this trouble]. (report # 36)*

Unhappy/Disturbed Childhood

Traumas and unhappiness or victimisation during childhood were frequently invoked in depicting the individual as suffering the consequences of former experiences now being manifested in criminal or anti-social behaviour. Again, this presents a welfarist aspect of the person in its depiction of present behaviour being shaped by past experience.

Examples 32 through 41 all exemplify this form of reasoning in which the trauma and unhappiness of childhood experiences continue to have an impact on adult life, emerging as offending behaviour. It is interesting to note, however, that for the male offenders, such early problems were located as the precipitant for other, contemporary problems, the solutions for which lay in addressing those problems in the here and now. For the woman in examples 32 to 34, however, the answer to her problems is argued to lie in addressing the early experiences rather than the current problem areas – a very welfarist position to take, and one which reflects other work on probation reports which suggests that women's offending is more likely to be pathologised than that of their male counterparts (Eaton 1988). Indeed, the report writer distinctly suggests that no progress can be made until work has been done on the emotional issues underlying the offence through expert intervention.

32. *"traumatic upbringing by her mentally unstable mother...had a damaging impact upon her." [further offending can't be ruled out] "until she addresses the deep rooted emotional issues." (report # 41)*
33. *"Stealing began when her mother was facing eviction" "her worries and concerns about her family escalated" (report # 41)*
34. *"...it is my opinion that there may well be a deep seated psychological explanation for her offending, connected to her having been deprived of her childhood and propelled into adulthood" (report #41)*
35. *[Parents separated when he was 7] "he described an unsettled childhood." (report #28)*
36. *left home at the age of 16" (report # 45)*
37. *"...he refers to a difficult relationship with both his parents...experienced a sense of rejection." (report # 28)*
38. *"Says that his childhood was a rather unstable one and his parents separated when he was 9." (report # 43).*
39. *"recalls being beaten by his stepfather at the age of 9" (report # 45).*
40. *"ran away from home and spent one year in the care of the local authority." (report # 45).*
41. *"he recalled an unsettled upbringing marked by conflict with his father...indeed he experienced beatings from him." (report # 49).*

Affective Bonds: Marriage, Family Relationships

A further source of stability is located within the network of relationships which connect the individual to others, whether through marriage or cohabitation or to other family members. The quality of such relationships is frequently offered in PSRs as an indicator either of someone with adequate emotional competency, incorporated into a supportive network of family

affiliations or someone lacking in such ties and thus less grounded by responsibilities and obligations.

Examples 42 through 50 exemplify the routine use of information which is conveyed so as to suggest familial stability. Where previous relationships have broken down, the offender may be given credit for maintaining contact and material provision for the former partner and children. In some cases such information is augmented by more subjective considerations which do little to add to the overall aim of depicting a stable tie into the community through a stable family structure. Thus in example 44, the author observes that the relationship has been “volatile” whilst still continuing. Example 45 mentions the weekend stays of children from a former marriage without ever making clear what such information suggests or to what aspect of the case it is relevant.

42. *[has lived with present partner and her daughter for past year. They plan to marry. 2 daughters by ex-wife who he sees once a month. Last marriage came to an end during prison sentence].* (report # 20).
43. *[Lives with partner and 3 kids. Expecting another]* Report #21)
44. *[Been with partner 10 years, 2 children, expecting another:] “relationship has been volatile but has endured”* (report #25).
45. *“...he has 2 younger children from a second marriage who, he says, used to stay at weekends”.* (report # 28).
46. *“It appears that the marriage is strong.”* (report # 37).
47. *[has] “a stable relationship with his wife and is the father of 6 children”* (report # 18).
48. *“he has currently derived much purpose and direction from his relationship with his fiancée.”* (report # 49).
49. *“...couple were married in 1997 after his previous marriage ended 5 years previously”*(report #14)
50. *“on good terms with his first wife and has contact with his children aged 12 and 9 on a weekly basis”* (report #14).
51. *[ex-partner left him in 1993 but “he has assisted her and has been helpful to her since”... “has decided that he can’t live near her so will support the family from afar”* (report #16)

In some cases, an unhappy or traumatic relationship may be linked to present difficulties, problems or offending by the depiction of a person still troubled by such experiences. Thus in example 52, parental divorce and relationship with a sibling provide the context for unhappiness and offending in later life. Example 53 invokes a 10 year old marital breakdown as the basis for ongoing guilt and unhappiness whilst example 54 also roots the offender’s present circumstances in the breakdown of her marriage. In example 55, the offender himself is quoted as providing an example of affective competence with regard to a recent bereavement in order to demonstrate familial commitment and thus presumably stability and responsibility.

52. *“he described the difficulty he experiences in coming to terms with his parents’ acrimonious divorce and relationship problems with his brother.”* (report #45).

53. *[marriage broke down 10 years ago.] "feelings of guilt at not being able to provide financially or emotionally" for children.* (report # 19).
54. *"Difficulties in life following break up of her marriage"* (report # 8)
55. *"stepfather died recently and he had to provide considerable emotional support to his mother. Mr V offered this as evidence of the stability and resilience of his commitment to those close to him in recent times."* (report #22).

Material Circumstances

Material circumstances provide a context within which an offender's behaviour can be understood. At least, that is, within a welfarist discourse in which environmental influences upon behaviour are acknowledged as part of any explanation of such behaviour. From a neo-liberal perspective, such factors are much less likely to be accorded explanatory significance, with a heavier emphasis upon individual's volition, choices and decision making.

Accommodation

The mention of offender's accommodation provides an indication of stability – through commitment to the payment of rent or mortgage and thus evidences some roots in the community. Examples 56 through 59 illustrate this type of statement. It is interesting to note that PSR writers find it necessary to comment on the type of accommodation, particularly where this is of questionable relevance as in example 56.

56. *"Single man" "...shares flat with fiancée."* (report #1).
57. *Single man living in a mobile home.* (report #33)
58. *"lives with his parents in a privately owned house"* (report #34)
59. *"has lived at this address – a rented property- for 6 months"* (report #49)

Employment

Given the context of a society in which employment tends to act as an index of both social success and individual commitment and responsibility, it is no surprise that PSR writers tend to present offenders' involvement or attitudes toward work as proof of their past, present and future capabilities and as evidence of some attachment to a responsible lifestyle. Reports focused particularly upon individual's economic performance and their commitment toward maintaining steady and legal employment. Several factors seemed to enter into the equation here. Firstly, a reliable work record is presented as an indication of a reliable character who is therefore capable of acting more responsibly in the future. Secondly there is also the implication that imprisonment will not be suitable for such a person since it would jeopardise that work record and thirdly there is a depiction of those willing to carry out waged work as being "active" – taking responsibility for themselves and their families- rather than passive and relying on benefits. This is an interesting point since welfare benefits have increasingly become

problematised as indicating a “passive” individual, outwith the more dominant active individual of late *twentieth* and early twenty first century society (Dean 1995).

Employment acts as an index of several dimensions of stability, indicating a capacity to apply oneself in the pursuit of material gains, a willingness to maintain one’s independence and in many cases, a means of supporting one’s family and dependants. Steady employment thus reflects both stability and the potential to re-establish further stability through discontinuing criminal behaviour – particularly where to continue such behaviour would be likely to endanger one’s employment.

Various statements were offered up as confirmation of an offender’s stable work record and made mention of the skills, capacities and dispositions that the individual had acquired as a result. Example 60 represents such a statement in which the individual’s long career in the Army is presented as a form of character reference. Example 61 makes the connection between work and responsibility and stability explicit and example 62 represents a frequently encountered character reference. Example 63 emphasises the longevity of the person’s employment for one employer and then, in adding that this person is now self-employed, adds a reinforcing statement about British Gas in order to stress the permanence and stability of the work.

60. *“joined army at age 17” “exemplary record” “...served 22 years and has travelled the world” “was a senior NCO in the catering corps and is experienced at supervising others” (report #12)*
61. *“his work record would suggest long-standing reliability and a sense of responsibility.” (report #14)*
62. *“Good employment record.” (report #49)*
63. *“continuous work experience including 5 year apprenticeship (he spent 14 years with the same employer)... “now self-employed but works primarily for British Gas” (report # 26).*

As well as positive statements concerning employment, reports also contain negative assessments of the individual’s capacity or inclination for legal, waged work. Example 64 emphasises the offender’s failure to adopt ‘normal’ economic behaviour and, in its wording, suggests that the offender is materially dependent, probably upon the state whilst example 65 makes clear the absence of any substantive work record. There is an ambiguity in the use of such negative statements in that, as example 64 shows, they can be used as a springboard from which to make a tentative positive comment – in this case that the offender is optimistic about finding work. In one statement then, the offender is portrayed negatively whilst also being given space to suggest that future progress will be made in this area in the other he is not. The reader is thus able to draw various conclusions from the information provided.

64. *“..by his own admission he has also failed, to date, to put his life on a sound footing by gaining economic independence or constructive employment”... “but remains hopeful that in the not too distant future, this position will favourably alter.” (report #50)*
65. *“unemployed since leaving school.” (report #25).*

Where offenders lack work but are seeking to remedy that, they are portrayed in an “active” mode which contrasts with the “dependent” position occupied in welfarist discourse (Dean 1995). So, for example, example 66 has the offender making a statement in which he rejects claiming benefits in favour of “proper” work - thus marking out his independence and autonomy and portraying himself as an active subject. The other examples also involve representations which identify the individual as responsible agents in regard to their attitude to employment. For the offender in example 67, work is actually conceived in terms of having a rehabilitative function whilst examples 68 through 70 convey the impression of individuals intent on pursuing waged work.

- 66. *“he informs me that he is not claiming benefits, preferring, he says, to work”* (report #11)
- 67. *[wants new career] “...he sees employment as particularly central to his successful rehabilitation”*(report #19)
- 68. *Good employment history – although unemployed now. “actively looking for work”* (report #6)
- 69. *“...confident that he can obtain employment”* (report # 7)
- 70. *“wishes to take up his own car valeting business.”* (report #7)

Not working at all tends to be seen as “inactive” and involves notions of dependency, passivity and irresponsibility in failing to engage in the process of providing for oneself and one’s family. Such information then, tends to be accompanied by explanations of *why* the individual is not working. In the three examples below, the first two qualify unemployment with reasons, in this case drug addiction and physical incapacity. The third example locates the unemployment directly with the individual himself, emphasising the point by the stress of the individual’s admission of laziness. It is possible to see that such comments present different evaluations of the offender, in the first and third example there is a negative connotation attached to drug use and laziness whilst in the second example there is the positive fact of a good work record interrupted through no fault of the individual himself.

- 71. *“On benefit... Can’t work because heroin addict.* (report # 13)
- 72. *“has always worked until recently when he had a stroke”* (report # 17).
- 73. *“admits to having no job due to ‘laziness’”* (report #50)

As previously noted above, employment is a strong indicator of stability – providing both economic security as well as acting as an indicator of personal commitment and responsibility. The active approach of the offender in example 74 represents him as using the time in prison in a constructive and goal-oriented manner – rather than serving his time “passively”.

- 74. *“in prison he took courses to enhance his future employment opportunities”* (report # 20).

75. *"He is aware that his main priorities are to seek regular work and make more constructive and responsible use of his spare time" (report # 34).*

Causes, Correlates and Contributory Factors

In discussing the offender and his/her behaviour, officers included information highlighting causal or contributory factors which accounted in part or entirely for the criminal activity which had been committed. Some of these are shown below. The reporting of these factors can be effected from either the offender's perspective, or from the probation officer's (expert) perspective. Drugs and alcohol were both frequently cited factors as conducive toward an individual's offending. As the first two examples below illustrate, reporting such substance abuse from the offender's point of view renders the statement provisional, to be investigated further rather than the more intransigent character of an expert statement deployed as fact.

76. *"describes himself as an alcoholic" (report #16)*
77. *"appears to have an alcohol dependency" ... "whilst he has made some efforts to address this issue, from what he says he has yet to receive any real assistance." (report #45)*

Substance abuse also is tied in to other problems, as in examples 78 and 79, where mental health and familial relationship issues are linked to alcohol abuse. Example 79 also couches the defendant in terms which place him in a potential victim role, "vulnerable" to reoffending, thus removing an emphasis upon his own agency and setting up the potential for further offending as a function of the interaction of drink and personal problems.

78. *"alcohol abuse and emotional distress have led to mild psychotic symptoms." (report #8).*
79. *"use of alcohol and continued strain of his relationship with his brother suggest that a vulnerability to offending remains" (report #39).*

There was also, on occasion, the inference that the offender was isolated from assistance and treatment for a particular problem as in this example where the lack of treatment for the drug problem is cast in an explanatory vein:

80. *"at the time of remand, Ms F was not receiving any input to assist her control or eliminate her substantial heroin addiction" (report #13)*

Substance Abuse

Drug and alcohol abuse loom large in the explanatory topography of pre-sentence reports. They are evidence of both an urge to seek immediate gratification by feeding one's habit, manifesting as often irresistible urges to offend and also of an abnormal or deviant lifestyle, engaging in social interaction with similar deviant others. Drink and drugs are, therefore, robust risk factors which probation officers have to identify and map out in terms of their impact upon the person's behaviour and offending in order to suggest strategies of risk

management and reduction. Once more, an active disposition toward such problems is given credit and approbation since it indicates a willingness to engage with strategies of self-governance.

The following all focus on and emphasise this active stance toward substance abuse problems. Indeed, the second example explicitly refers to the individual as having engaged in risk reduction. The fourth example is somewhat less emphatic, but allocates credit on the basis of having undergone “cold turkey” without seeking medical assistance whilst in prison. The last example exemplifies the inclusion of *possibly positive* behaviour in that alcohol reduction is seen as a desirable action but the only evidence for this is given by the offender himself. By the reporting of such information with the qualifying “he adds”, the probation officer negotiates the tension between what he or she is able to verify and what the offender says.

81. *“I regard Mr K. as currently motivated to take advantage of any help on offer to build on his current ability to stay away from drugs and I regard this as the way forward for him” (report # 45).*
82. *“... he has reduced the risk he presents by dealing with his misuse of drugs” (report #15).*
83. *“...clear that Mr. M gained from supervision and he has formulated and used methods of controlling his alcohol use” (report #48).*
84. *[whilst on remand] “enforced detoxification has been useful and he has not needed to resort to medication to cope with the withdrawal” (report #19).*
85. *“...he adds that he has considerably reduced his alcohol intake” (report #11).*

Further along the spectrum of aspiring to governmental competence are much more cautious and less positive statements which indicate the lack of satisfactory forms of self governance. In the first example the need for continued work is clearly stated whilst in the second, the offender is depicted as having made an active choice to indulge in heroin use, thus enhancing his capacity for ‘risky’ behaviour.

86. *“...he still needs to undertake further work in order to be able to fully exert control over himself and his drug use” (report # 4).*
87. *“his recent decision to use heroin...adds a further element of risk” (report #17)*

Habitual Behaviour

So far I discussed how PSRs represent the individual along to various dimensions of responsibility, stability and autonomous and independent economic behaviour. This next section deals with statements pertaining to the general behaviour and activities of the offender, particularly as they relate too the offence or offences which have led to the court appearance. Overall, we may identify these various statements about the offender as locating the individual along a continuum of *suitability for government*, a continuum running from being judged as ungovernable through to those thought eminently governable. Such a continuum with another that we may call *the intensity of governance* and by which I intend the way that the person is

judged to be in need of a particular disposal in order to affect or correct his/her offending and restore he/she to normal (legal and responsible) behaviour. As part of such an assessment, the statements collected below pertain to considerations of the individual's behaviour –to what extent is the behaviour volitional or determined, what causal, contributory or correlated factors can be identified in connection with the person's offending behaviour; is it typical or atypical, brought about by avarice, malice or chance and to what extent is the person capable of exercising self –government and how much assistance, compulsion or coercion will be necessary to bring this about?

In their reports, PSR writers sought to identify whether the offending behaviour was typical or atypical of the individual. Such information enables a focus upon the person as exhibiting stable facet of social and personal life which may have the capacity to exert a governmental influence in the future or through which governance may be effected. The first four examples below all exemplify statements aimed at disconnecting the offending behaviour from the individual him/herself. By such a distancing of the act and the actor, the court is enabled, the reports will go on to suggest, to deal with the act in terms of its specificity rather than in terms of a pattern of behaviour indicative of a flawed individual. Sometimes, as in example 92, a claim to atypicality is made which is actually at odds with information contained elsewhere in the report. In this case the offending is very much part of a pattern of similar behaviour and the denial of this creates a tension which may or may not be apparent to the sentencer – depending upon the extent to which the report influences their decision making. Example 93 shows another distancing technique which this time locates the current offence as an aberration or relapse after his “determined effort” to go straight, thus crediting the person with both law abiding capacities and evidencing his agency in maintaining non-criminal conduct.

88. *“normally a law-abiding citizen”* (report #12)
89. *“offending out of character..”* (report #5)
90. *“also clear evidence of her difficulties in responding to authority figures by her failure to respond to bail”* (report #13)
91. [offence] *“not characteristic”* (report #14)
92. [Offence of criminal damage] *“not typical of MR. S” [but despite a pattern of similar offences]* (report #38)
93. [offences come] *“as a surprise in the context of the determined effort Mr.C has made to rehabilitate himself”*.(report #20)

Where behaviour was typical or reflected previous patterns of involvement in “unstable” activities, such information might be qualified by recourse to descriptions of other, extraneous variables which impacted upon the individual. Drug use was one such variable, representing a destabilising factor which tended to undermine any attempt at leading a stable, normal, lifestyle. The influence of criminal or anti-social others also could be represented as

having a destabilising function, particularly where, as in example 94, the individual was seen as lacking the strength of “character” to resist such influences and temptations. Example 96 offers an example of an offender’s justification for continuing a previous pattern of behaviour – in this case domestic violence- as resulting in a reaction to being provoked. The use of such justifications in accounts of criminal involvement are common (Sykes and Matza 1957; Semin and Manstead 1983), but tend to only appear in PSRs where the author is unable to find another, more satisfactory, account. Such accounts, as we have seen earlier, are given more credit where they avoid justifications and rationalisations and refuse to take up an appropriate subject position toward their offending.

94. *[All offences drug related] “weakness of character – he finds other drug users a powerful influence” (report #25)*
95. *[Long standing drug addiction. Started on glue when aged 11. “says he is not used to not being in prison.” (report # 47)*
96. *[previous violence] “He justifies this because his wife was unfaithful” (report #16)*

Faulty Personal Skills

In terms of causal explanations and representations of offending, probation officers frequently drew on models of behaviour which emanated from faulty moral and cognitive functioning which affected an individual’s choices and actions. Such behaviour might also result from the impairment of moral or cognitive functioning, usually brought about by the use of drugs or alcohol.

97. *[she] “...lacks the ability to think through her behaviour and I assess she is very limited in this respect” (report #8)*
98. *“...tells me he was relieved when he was arrested as he was aware that he was out of control...” (report #18)*
99. *“He allowed his feelings of paranoia to fester and produce feelings of anger..” “It was in this irrational, inebriated state that he assumes he committed the offence...”(report #19)*
100. *“Took a chance..” “a moment of madness...” (report # 23)*
101. *“illustrates, in my opinion, the type of impulsive behaviour to which he is likely to resort when under pressure...” (report #37)*
102. *“... could provide me with no explanation for his behaviour beyond the emotional state he was in ... ” (report #39)*
103. *“he suffers from low self-esteem and frustration at the unstimulating job choices available to him...these in turn have acted to lower his capacities to act assertively and responsibly.” (report # 42).*

Example 97 identifies the offending behaviour as a result of faulty or deficient thinking with the officer making clear that this is his or her assessment. Example 99 attributes a certain amount of agency to the offender in that he has “allowed” his thought processes to build up to an expression of anger which, at a critical moment, clearly coupled with the use of alcohol, produced the offending behaviour.

For some offenders, their criminal behaviour is depicted as an isolated incident, either an impulsive decision to commit the offence or a “one off” as a reaction to circumstances. Example 100 exemplifies this. The offending was due to a sudden and limited moment in which rational control was lost. For the offender in example 101, offending is identified as a response to a particular type of situation. The following example sees the offender as unable to fully rationalise his behaviour other than in terms of an ‘emotional state’ – with the implication that this is not a wholly adequate explanation. The following examples set out descriptions of an offender unable to function at a normal level due to the erosion of his responsibility and self esteem

Various other contributory factors were reported. A lack of constructive leisure activities, delinquent influences, and physical and medical problems characterise the first two examples below. Example 106 puts the individual forward as someone who was in crisis when offending and who seems capable of a more reasoned approach in the future.

- 104. *“he says boredom and peer pressure contributed to his [offending] behaviour”* (report #11)
- 105. *Separated from husband who is in prison. lives with her 4 children. Depressed. Ill health “also had gallstone operation. (report #30)*
- 106. *“conveys the impression of someone at a ‘watershed’ in life when he committed the offences”* (report #37)

Risk and Self Government

PSRs are required by National Standards to have an assessment of the level of risk posed by an offender. The reports here, whilst treating this assessed level of risk in a rather peremptory manner⁶⁷, did engage in more detail with the circumstances and contingencies in an offender’s life likely to exacerbate, sustain or provoke further “risky” - that is to say offending - behaviour. Risk tended to be viewed in terms of the individual’s capacity for self-government. This entailed a consideration of the extent to which the offender had evidenced such self-governance previously, whether he or she had tried to achieve self-governance or whether he or she resisted or refused to accept the introduction of various governmental measures into their lives. Thus the existence of a capacity for self-governance located the individual along a continuum of stability and conformity with the extent which an individual was identified as stable and conforming acting as an indicator of the intensity of intervention required to insert mechanisms of government into that person’s life.

At the stable end of the spectrum, social and personal competence were indicators and components of a low risk judgement. There were not many reports where there was judged to be such strong evidence of personal competence that intervention was considered scarcely necessary: Where such evidence was present, it was acknowledged as a reason for minimal or at least non intrusive intervention.

107. [He seems to be] *“a man of previous good character with well-defined community ties and a lifestyle contributing to society in an acceptable fashion... [appears to have] the capacity to manage his affairs without intervention”* (report #26)

Where full social competence was not present - and few offenders were rated as exercising such a degree of competence – report writers sought to consider risk in terms of *aspirations to competence*, activities and behaviours which indicated that the individual had tried to improve his or her capacity to deal with the circumstances or factors inhibiting stable, regular patterns of conduct. Such attempts to acquire governmental skills, techniques and dispositions were identified in particular as addressing issues around aspects of social skills and behaviour, of drug and alcohol abuse and employment.

The autonomous control of one's conduct is the epitome of successful self-government. Successful self-government involved competence in a variety of settings and situations. The desirable state for such an offender in a PSR is one of being motivated toward rectifying this, indicating that one will be *active* in seeking to address governmental shortcomings, as example 108 shows.

108. *“He is aware of his inability to deal with stress and has expressed a desire to control his actions in the future”* (report #27).

For those who, for a variety of reasons, are unable to comport themselves competently in social and economic life, a more structured intervention is often indicated as in this example, where a systematic approach to the development and inculcation of normative skills for managing daily life is seen as offering a pathway toward a stable and law-abiding life.

109. [living in a hostel] *“currently working on a planned programme of intervention... daily work to encourage leisure pursuits and increase his social skills – cooking, cleaning and budgeting-... this form of structured lifestyle is pertinent to his successful rehabilitation”* (report # 10).

Some credit is also given for having at least considered options and possibilities for change – a recognised stage in the “cycle of change” involved in an individual's reflection on, and subsequent enactment of, transitions of behaviour (Miller and Rolnick 1991). The positive connotation, however, is tempered by the emphasis on a lack of expert or authorised input.

110. [in prison] *“he has given much thought to his behaviour and the thoughts and feelings underpinning it but this has not taken place in the context of any formal work with staff within the prison”* (report #45).

The Refusal of Governance

Whilst credit can be assigned to those offenders who respond in ways which suggest that they are willing to accept particular governmental interventions in their lives, the reverse is also the case: the refusal of governance marks a rupture between the probation officer's offer of

help in establishing, stabilising or strengthening the offender's mechanisms of governance and the expectation that the offender will engage with such activity. The logic which runs through the pre-sentence report, then, is which reaches a conclusion predicated upon an individual willing and able to recognise what needs to be done to correct his or her behaviour and to indicate that they are prepared to engage in whatever activities are thought necessary to address their failures of governance. For some offenders however, their behaviour was such that they presented as an individual who not only lacked appropriate governance but was also unwilling to do anything about it. Such an unwillingness was evidence in two themes of refusal, the first pertaining to a failure to respond to previous criminal justice interventions and the second to an outright refusal or reluctance to engage with the conclusions of authority and expertise as to the best course of action. Examples 111 through 113 evidence the former category whilst examples 114 through 116 exemplify the latter.

Previous contact with the criminal justice system, then, is construed in terms of having been given access to an opportunity to work on issues of governance. The failure to take advantage of this opportunity is taken as reflecting a lack of motivation or resolve. The chaotic nature of the offender's life in example 112 is given as a disruptive factor in the work which could have been done with this person. The needs and demands presented were, by implication not those which the probation service had prioritised as salient factors for its intervention. These first two examples offer an official judgement of the offender as problem: the first linking to motivation, the second to the chaotic and unstable nature of the person's life. In example 113 however, contact with the criminal justice system has not impacted upon the woman's behaviour for reasons which are inaccessible to the probation officer – rendering her offending enigmatic and thus opaque to expert diagnosis.

- 111. *[He] “appears not to have taken advantage of previous supervision to assist him in changing his behaviour... [thus placing]... a question mark over his resolve” (report # 11).*
- 112. *[Previous probation records] “indicate that he had many needs and was very demanding. The opportunity to undertake planned and focused work was limited by constant moves” (Report # 17).*
- 113. *“Community sentences and imprisonment have not, this far, served to deter Ms C from criminal acts. Ms C presents as something of an enigma” (Report #8).*

For some individuals there is overt resistance to governance as the following examples suggest. In example 114 the offender is unwilling to enter into a rational calculus in which attachment to the stabilising relationship with his family outweighs the pleasures of his criminal lifestyle. In example 115, the woman is liable to react against what she sees as unjustified interference in her conduct – evidence of a refusal of governmental intervention. The final example depicts a person who has been given expert advice but in spite of that had failed to take it up, resisting the insertion of a governmental mechanism into her life.

114. *"...he is ambivalent to change – he doesn't want to lose his family but he doesn't want to lose his lifestyle"* (Report #21).
115. *"...the trigger for her violent conduct is likely to be when she has restriction placed upon her behaviour which she sees as unreasonable"* (Report # 13).
116. *"it has been my contention that she requires specialist counselling... but she is reluctant to pursue it.."* (Report #41).

The Logic of Intervention

The categories elicited from the 50 PSRs in the sample have been tabulated together in table 1. The table is divided into sections which correspond to the four possible combinations of agency and stability. Each case has been further assigned categories in terms of the need for governance – the assessment as to the risk of the offender reoffending and continuing with anti-social behaviour; the reason for a proposal – given here as broadly falling into certain broad rationales such as punishment or treatment and the actual recommendations and disposals in the last two right hand columns. The table serves to show the grouping of cases and the themes and rationales present within the report proposals.

The first section comprises the 'not responsible' but 'stable' offender. 'Responsible' is, as I have discussed above in some detail, an indication of overall agency – in terms of an offender able to recognise his/her part in the offence, the consequences of that offence and the moral dimensions attached to such behaviour. Such responsibility may be occluded by drink or drugs or by damaging and deleterious circumstances in the offender's life. It may be temporarily overridden by impulse, but such behaviour is often then recontextualised as a 'moment of madness' and accompanied by a discussion of the regret now being experienced in tandem with an empathetic engagement with the consequences of the offence. Thus responsibility may be reclaimed within the discursive flow of the report, particularly where there are indications that such wayward and impetuous behaviour is not typical of the individual and that he/she has some form of stabilising influence in his/her life through which the exercise of self-governance is encouraged. For most of the reports which fell into this section, the PSR author identified a low need for the extra governance in the offender's life available through an interventive penalty. In such a case, where the offence is not overly serious, the PSR will recommend a community service order, a punitive experience which both admonishes the offender and reminds him/her of the consequences of a repetition of such behaviour. The CS order is recommended as an irksome penalty through which the offender can repay society through unpaid labour. Once the requisite hours are complete, the offence is, so to speak, 'paid for'.

Table 1: The Logic of Intervention in Pre-Sentence Reports

PSR no.	Agency	Stability	Need for Governance	Reason for proposal	Proposal	Disposal
14	Not responsible	Stable	Low	Punishment	CSO	CSO
26	Not responsible	Stable	Low	Punishment	CSO	CSO
33	Not responsible	Stable	Low	Punishment	CSO	CSO
38	Not responsible	Stable	Low	Punishment	CSO	CSO
7	Not responsible	Stable	Low	Reparation	CSO	PO
20	Not responsible	Stable	Low	Reparation	CSO	Prison
17	Not responsible	Stable	Moderate	Treatment	PO	Suspended
41	Not responsible	Unstable	Low	Punishment/Treatment	Comb+	Prison
27	Not responsible	Unstable	Moderate	Treatment	PO	PO
46	Not responsible	Unstable	Moderate	Treatment	PO	Comb
19	Not responsible	Unstable	High	Offence too serious	None	PO
47	Not responsible	Unstable	High	Offence too serious	None	Prison
2	Not responsible	Unstable	High	Psychiatric problem	None	Prison
21	Not responsible	Unstable	High	Treatment	Comb +	Prison
16	Not responsible	Unstable	High	Treatment	PO	Discharge
8	Not responsible	Unstable	High	Treatment	PO	PO
10	Not responsible	Unstable	High	Treatment	PO	PO
11	Not responsible	Unstable	High	Treatment	PO	PO
24	Not responsible	Unstable	High	Treatment	PO	PO
31	Not responsible	Unstable	High	Treatment	PO	PO
43	Not responsible	Unstable	High	Treatment	PO+	PO
18	Not responsible	Unstable	High	Treatment	PO+	PO+
45	Not responsible	Unstable	High	Treatment	PO+	Prison
39	Not responsible	Unstable	High	Treatment	PO+	PO
1	Not responsible	Unstable	High	Treatment/Reparation	Comb	Comb
29	Not responsible	Unstable	High	Refusal of governance	None	Prison
34	Responsible	Stable	Low	Compensation	Compensation	Compensation
9	Responsible	Stable	Low	Fine	Fine	Fine
4	Responsible	Stable	Low	Punishment	CSO	CSO
23	Responsible	Stable	Low	Punishment	CSO	CSO
30	Responsible	Stable	Low	Punishment	CSO	CSO
32	Responsible	Stable	Low	Punishment	CSO	CSO
42	Responsible	Stable	Low	Punishment	CSO	CSO
48	Responsible	Stable	Low	Punishment	CSO	CSO
49	Responsible	Stable	Low	Punishment	CSO	CSO
40	Responsible	Stable	Low	Punishment	CSO	Prison
12	Responsible	Stable	Low	Punishment	CSO	Suspended
5	Responsible	Stable	Low	Reparation	CSO	CSO
22	Responsible	Stable	Low	Reparation	CSO	CSO
28	Responsible	Unstable	Low	Punishment	Fine	Fine
37	Responsible	Unstable	Moderate	Treatment	Comb +	Prison
36	Responsible	Unstable	Moderate	Treatment	PO	Comb
6	Responsible	Unstable	Moderate	Treatment	PO	CSO
35	Responsible	Unstable	Moderate	Treatment (PO to continue)	Discharge	Discharge
3	Responsible	Unstable	High	Punishment	CSO	Prison
25	Responsible	Unstable	High	Treatment	ISSP	Prison
15	Responsible	Unstable	High	Treatment	PO	Comb
13	Responsible	Unstable	High	Treatment	PO	PO
44	Responsible	Unstable	High	Treatment	PO	PO
50	Responsible	Unstable	High	Treatment	PO	PO

Key to abbreviations

Prob	probation order
Prob+	probation order with an attached condition (for example to attend a groupwork programme)
CSO	community service
Comb	combination order consisting of probation supervision and community service
Comb+	combination order with a condition attached to the probation element
ISSP	probation order with intensive supervision and attendance for drug treatment
Suspended	sentence suspended for a set period
Fine	imposition of a monetary penalty
Discharge	discharged on condition of good behaviour in future
Compensation	payment ordered to victim of offence
Prison	immediate imprisonment
None	no explicit proposal made in the report (often a tacit recognition of likelihood of custody)

There are, however, limits to this representation in terms of its influence with the courts. Whilst the first five reports on the 'not responsible' but 'stable' offenders all involved proposals for a CS order which were accepted by the courts, two further proposals for CS were not

followed. One case resulted in a probation order and involved the offender – an ex-addict-denying the offence, claiming innocence. Although the PSR author puts forward an argument that the man is getting ‘back on his feet’ and is looking for work, the court seem to have decided that the stability put forward in the report is perhaps not as stable as it might be. Rather than the ‘short sharp shock’ of CS, the court makes a probation order, in order to address the issues which it perceives as acting to destabilise the offender’s life.

In the second case, again the offender denies responsibility. His life is also clouded by past mental health issues and a history of previous offences. Despite this, he is portrayed as someone who is now ‘stable’ and open to being chastened through a CS order. Moreover, his offence has involved violent and threatening behaviour. The court clearly disagree with the probation officer, sending the man to prison. In terms of governance, the court opt for a risk containment strategy rather than an intervention such as probation.

Not Responsible-Unstable

The second, and largest, section pertains to the ‘not responsible’ and ‘unstable’ offender. Here, not only is there little evidence of are acknowledgement of culpability and consequences but there are also instances of destabilising factors which are likely to contribute to further offending. Only one such case emerges as having a low need for governance and even then, the actual proposal is for an up-tariff disposal of a combination order (probation and CS) together with an additional requirement attached to the order . The result is prison.

Two cases exhibit a moderate need for governance. In each case a probation order is proposed with one being taken up and one resulting in a combination order. Amongst those with a high need for governance, there is a preponderance of governmentally interventive proposals such as probation orders, probation orders with extra conditions and combination orders with and without extra conditions attached to the probation element of the order. Several proposals here result in prison, particularly where the probation officer has found it impossible to make a proposal for a community penalty in light of the seriousness of the offence and the offender's circumstances or attitude. In the final case, there has been a refusal of governance, with the offender denying any intent to commit an offence by carrying a concealed weapon, despite a long history of such offences. Coupled with an unstable lifestyle, this is enough to prevent the probation officer proposing any intervention and the court act to nullify the perceived threat posed by the individual.

Responsible-Stable

In this category, offenders are assessed as taking an appropriate stance toward their offending, accepting their role in its commission and the harmful effects of their actions whilst simultaneously exhibiting stabilising elements in their personal lives such as a job, a secure family relationship and so forth. In each case the need for governance is low – since there is little anticipated likelihood of any repetition of the offending behaviour. An appropriate response

toward such offenders tends to involve community service, taxing the time and providing an unpleasant response to their behaviour. The first of these cases is dealt with by means of a compensation order: CS appears somewhat analogous in that it is often invoked as a way of making reparation or compensation to the community. Two of these offenders have received more severe sentences than those proposed: one went to prison whilst the other was given a suspended prison sentence. In both cases the severity of the offence is deemed so serious that only a custodial penalty will do. The sentencing calculus then, overrides the proposal when there is a tension between the severity of the offence and the identified suitability for governmental intervention.

Responsible – Unstable

The final category involves offenders identified as responsible but with unstable lives. Only one such offender is identified as suitable for a minimal sentence, namely a fine, a proposal made since the individual had already been on remand for a week: the logic here being that the man has received a dose of punishment already. The offender given a conditional discharge was already subject to a probation order and was thus effectively discharged *back* to supervision, being considered a suitable case for intervention despite the relapse. Where there is a proposal for a high tariff disposal such as a combination order – in the second case in this category-, the chaotic lifestyle of the individual is deemed *too* chaotic for community-based governance. Amongst the ‘high need for governance’ cases there is also a greater use of custody and combination orders. The more governance needed here, the more unstable the offender and therefore the greater the challenge to intervention. In some of these cases courts play it safe, sending the offender to prison. Report 3, for example, received a proposal for a Community Service Order which, although undoubtedly punitive from a probation perspective, has not been taken up by the court which has preferred and even more punitive custodial response.

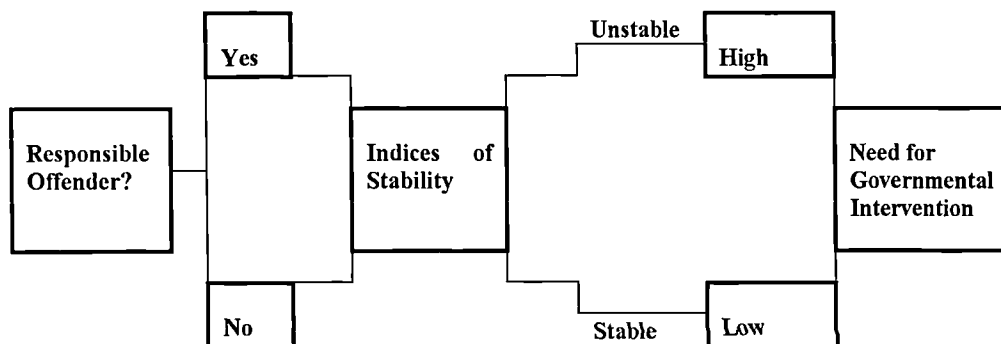
Conclusion

The logical basis for intervention set out in the proposals of the PSRs, then, can be seen to be structured around a continuum of governance whose axis runs from an individual capable of appropriate self government, an individual who evidences stable ties and links to the community and who is judged to demonstrate governmental competences and capacities such that future offending is unlikely, through to an individual whose governmental competency is assessed as inadequate, whose disposition toward future law-abiding conduct and self-government is uncertain or unsound and whose life contains various elements of instability which serve to undermine appropriate self-government. The location of the offender upon this continuum acts as an indicator of the strength and depth of intervention necessary to restore or introduce appropriate governmental activities across personal and social conduct.

As I have previously indicated above, welfarist interventions are to be expected to focus particularly upon affective states and relationships or upon deleterious external circumstances, emphasising the inner experiences or the structural constraints pertaining to the individual offender whilst stressing the role of expert knowledge in identifying a solution to such problems. Welfarist interventions, then, take on the nature of ‘treatment’ in that they are predicated upon something being *done* to (or perhaps more appropriately *with*) the individual in order to bring about change.

The logical structure of the arguments in the reports followed the model set out in figure 1 in which the initial question addressed agency in terms of identifying the *responsible offender*. Responsibility involved a demonstration of an awareness of the impact and consequences of the offence and a willingness by the individual to accept his or her role in the offence. Responsibility then, is the adoption of a subjective stance toward the offence which displays a reflexivity toward one’s behaviour which is nuanced through the moral inflections of regret, remorse and culpability. Such expressions also enabled the ‘recovery’ of responsibility in some cases where judgement and rationality were argued to have been temporarily overridden by the use of drugs or alcohol or impulse.

Figure 1: The Process of Identifying the Need for Governance



Whilst agency – the identification of the ‘responsible offender’- was an important indicator of the need for governance, with such a need being inversely related to the level of responsibility identified, stability emerges as a key factor in the discursive logic of the PSR. Stabilising factors – employment, marriage and family, owned accommodation, having one’s own business – are all taken as indices of established mechanisms of governance in one’s life. To the extent that these factors are taken as guarantors of the stability of future conduct, intervention becomes a matter of expiation or reparation – in the form of a non-interventive punishment which requires the offender to ‘pay for’ his or her offence either through a fine or community service.

The least interventive measures, then, were aimed at those whose behaviour and lifestyle were assessed as 'appropriate' or 'normal'. Such individuals' offending was either stupid, silly or rash and reflected a momentary loss of normative composure which in itself, whilst undesirable, was not an indication of a lack of governmental capacities. Such offenders were best dealt with by means of a punitive disposal, principally community service which was also argued to enable them to make reparation to the community. Indeed, "pure" punishment was rare and any mention of punitive intent was almost invariably linked with reparation as well. Punishment was often given as a rationale where there was no identified evidence of an inability to self-govern on the part of the individual. Community service in such cases was analogous to a fine of the offender's time, time which would be, as it were, donated to the community. Offenders for whom community service was judged appropriate were considered, in the main, to be capable of understanding the sanctions which underpin community service demonstrating that they were "fully aware of the consequences of non-compliance" (Report # 4) whilst also being reminded of the consequences of their offending behaviour in the first place. In another, the offender was judged to "have given adequate thought to his actions and is aware of ways that he can reduce any risk of reoffending in the future" thus providing evidence of his ability to conduct his own risk management- the mark of a properly functioning neo-liberal subject (Report # 40). The responsible and stable offender, then, corresponds to the ideal model of a neo-liberal individual: capable, autonomous and competent, but whose behaviour needs a little 'steer' in order to put it back on track. Offending is atypical and, by a disposal which emphasises the high cost of offending, the offender can be 'priced out' of similar future behaviour.

This leaves a group of offenders whose lives are characterised by a lack of governance, evidenced in their past and present behaviour, in their use of alcohol and drugs and in terms of their economic capacities and use of leisure time. Such offenders are not active and self-sufficient in their personal or social activities, indeed, they are *dependent* – upon others, upon the state (for example in receipt of social security benefits) and upon their addictions and habits. They are unable to take charge of their lives. These offenders are in need of governance and the question which now emerges is to what extent and in which areas of life is such intervention warranted. Certain factors were identified within the analysis of proposals which marked a need for governmental intervention. These were areas in which individuals were unable to manage personal problems or shortcomings themselves, with the result that these problem areas tended to result in offending. The major indicators of a need for intervention were:

- Drug abuse
- Alcohol abuse
- A "chaotic" lifestyle in which multiple problem areas were unaddressed and where the individual was unable to obtain or maintain suitable assistance with such problems.
- Problems of reasoning, inadequate thinking skills

- A lack the personal discipline or self-governance necessary to function at the level of day-to day social interaction

In these cases, interventions were couched in terms of ‘treatment’, either literally, as in the case of drug addicts, or figuratively, with interventions based on addressing beliefs and attitudes toward offending. In treatment cases, the offender is reduced to a social problematic which is to be cured through interventions aimed at tackling the destabilising factors in that person’s life. Competence is to be restored through such interventions. Table 1 shows that for cases where the offenders’ lives have been identified as unstable in some way, the reasons given for the proposal are overwhelmingly treatment oriented. They are in effect, welfarist: even where agency is evidenced – the ‘responsible offender’ – the presence of destabilising factors is associated with treatment type interventions. There appears to be, then, a conflation of welfarist and neo-liberal elements in the assessment of the individual. Whilst a neo-liberal model of the active individual is used to portray positive aspects of the offender and to enable the use of a punitive but non- intrusive measure such as community service or even a fine, the intervention for those less active and responsible, and with fewer governmental influences or resources to draw on, is increasingly interventive.

The authority of this probation discourse is bounded, however, by the seriousness of the offence. The 1991 Criminal Justice Act is underpinned by the notion of proportionality: the punishment meted out by the court should be relative to the gravity of the offence (Wasik and Taylor 1991; Ashworth *et al* 1992; Gilyeat 1993). This leads to a ‘bifurcation’ of sentencing, with some offences “so serious that only a prison sentence will reflect the seriousness of the offence” and others “serious enough to warrant a community penalty” (Hudson 1995). The severity of offences is conceived as a sliding scale, with the particular gravity of a case being aggravated or mitigated by the specific circumstances of the case. Mitigating circumstances, for example, include a guilty plea, addictions and being of previous good character, whilst an offence may be aggravated by factors such as a vulnerable victim, breach of trust, evidence that the offence was systematically planned, used excessive force or was of a particularly sophisticated nature (Gilyeat 1993). The determination of the exact seriousness of a case, however, lies with the court and is a matter of the court’s interpretation of the circumstances of the offence. Probation Officers working in the area from which the PSR sample was drawn, make use of a ‘seriousness scale’ which indicates the percentage likelihood of custody in a case, given the offence type and the offender’s previous convictions. Assessment of aggravating and mitigating factors are left as a matter of professional opinion. To the extent that Probation Officers and sentencers do not share the same view of the seriousness of a case, there will be some discordance in “take up” of reports by sentencers with the use of penalties other than those proposed in the pre-sentence reports. The “fit”, then, between proposal and disposal is mediated by the concordance of the court with the officer’s assessment of the case. Where the court feels

that a report proposal is for a penalty that is not fully resonant with the seriousness of that case, it will feel free to sentence in a different manner and may indicate its displeasure from time to time at this lack of congruity between probation discourse and that of the law.

In the final chapter of this study, I consider the overall shape and pattern of change in the probation service at the start of the twenty first century, taking into account the findings presented above in light of the theoretical and empirical arguments put forward in earlier chapters.

7 Conclusion

Foucault: Truth, Power, Ethics and Government

The central argument underpinning the present study is that there has been a rethinking and reformulation of government over the last twenty five years or so. This rethinking has seen a move toward what has been described as a ‘neo-liberal’ mode of governance and this reorientation has impacted upon the practices and techniques of the probation service. My analysis has focused upon the changing structure and organisation of probation practice and, more specifically, examples of the articulation of probation discourse in a particular area of practice, namely that of the court report. The former has been discussed using contemporary materials which offer discursive exemplars of the rationalities underlying probation whilst the latter has been examined through an analysis of pre-sentence reports. In both instances, the use of theories of governmentality to inform my analyses has enabled a theoretical analysis which connects specific practice to more abstract political rationalities, thus maintaining a recognition of the political nature of even very localised practices and programmes whilst avoiding the “political insulation” of many micro-focused investigative approaches (O’Malley, Weir and Shearing 1997: 503).

The overall theoretical orientation of this thesis has been derived from the work of Foucault. Foucault’s work and its subsequent elaboration by numerous other scholars since his death has provided a useful framework for examining the operations of power in modern society. The tripartite emphasis of Foucault’s work upon the interplay between knowledge, power and subjectivity provides a framework within which the *technical* nature of modern society may be rendered amenable to analysis in terms of its mechanisms of governance. The shape of practices and techniques of governance at particular historical moments tend to exhibit a certain “strategic coherence” between political rationalities through which human conduct is conceived, debated and diagnosed and particular ways of acting upon that conduct (Rose 2000:323). The “governmentality” literature which has developed over the last decade or so addresses specific forms in which such a strategic coherence is discernible in the ways macro-political discursive aims and objectives are enacted to a varying extent through mechanisms of government at mundane, local and specific levels (O’Malley, Weir and Shearing 1997:503). Within such an approach, the state is conceived as governing through a dispersion or devolution of power rather than in terms of deliberately manipulating its populace through each and every institution and agency possible. Such a dispersion of power governs “at-a-distance” through the variety of expert institutions and agencies that emerged during the late nineteenth century and into the

twentieth century in response to issues of the security and welfare of citizens. As Dean argues, social policy is not merely enacted by the State but depends upon

“particular technical conditions of existence, rationalities and rituals of bureaucracy, forms of expertise and intellectual technologies and the enlistment of agencies and authorities both within and outside the boundaries of the state” (Dean 1995: 571).

The processes of government-at-a-distance by an agency or institution function over three broad levels: that of political discourse, that of the practices of the institution and at the level of subjectivity of the individual subject to governance (Rose 1992: 144). The enactment of government, then, involves the translation of macro-political theories and concepts, *discourses of rule*, which address questions of “why”, into specific, localised activities, *technologies of rule* which provide the means as to “how” the problem will be dealt with (Carrabine 2000). The accreditation of authority to particular institutions and their agents and functionaries attributed an ability to speak the “truth” of the subjects and constituents of their particular epistemic jurisdictions, enabling these experts to problematise certain aspects which represent abnormal or pathological deviations from expert-defined norms. Such agencies were empowered to act to bring about the necessary corrections often with legal backing for their interventions. More often, however, expert intervention in the welfarist state was predicated upon the enlistment, rather than enforcement, of citizens in such corrective actions, attuning and re-establishing their habits and patterns of conduct in line with particular governmental aims and objectives. Through various persuasive processes, citizens were educated in norms of behaviour and thought that were more healthy, hygienic, effective and efficient and which contributed to the well-being of both individual and society. Habits of conduct were established by enjoining individuals to adopt such habits for their own good, thus governing without compromising the freedom that liberal government takes as an essential precondition of civic life. In this respect, habits are “highly functional for freedom” (Valverde 1998:36). Within the framework of ‘government-at-a-distance’, one sees the interconnection between truth and power embodied in various structures of expertise and, resulting from the operation of such structures, the way that ethics – the subjectivities of individuals and their relationship to themselves and to others- are addressed and constituted. The tangled relationship between knowledge and power becomes more evident, then, as we consider that the powers of expertise to act upon citizens has tended to be predicated upon the knowledge held by expert practitioners.

Theorising and Analysing the Nature of Change

As I have argued in previous chapters, understanding the change from a welfarist approach in probation to one that embodies neo-liberal concepts can be fruitfully accomplished by considering such change in terms of representing a rethinking of government. Two levels of analysis have suggested themselves as particularly useful to my purpose: – the first is at the level

of *organisation*, in terms of laws, rules, guidelines, policy statements, statements of purpose, lines and mechanisms of accountability and so on, that evidence the thought surrounding ways in which a particular institution operates at a particular time. The second level is at the level of knowledge: the discursive realm which provides the epistemological context for action, encompassing both a professional or expert philosophy, conceptions of the individual and prescriptions and techniques for action with that individual. Both these levels form the “how” response to the “why” questions posed by political discourse. In addressing change, I have done so from a position which considers such change in terms of being nuanced and multi-faceted and which takes place at differential rates. This is to say that change may not involve total transformations in structures or practices but may also see mutations in which processes of accommodation and convergence result in “hybrid” forms of institutional activity.

There are, then, argued to be certain resonances and homologies between political rationalities and specific instances of practice. These have been depicted in ‘governmental’ terms, elevating relationships, practices and statements to a level of abstraction in order to locate them within a wider ranging theoretical exposition which is not dependent upon either the daily routines of practitioners nor the aspirational rhetoric of politicians. This approach locates probation within a historical and political context and provides a descriptive analysis of its activities that does not depend upon a transcendental conceptualisation of its role and purpose but rather links institutional tenacity of purpose to the endurance of forms of political reason.

Below I set out the levels at which a rethinking of governance is evident in the research which has formed the core of the present study.

At the *organisational level* there are three major facets of change:

- i. Shifts in the relationship between the probation service and central government in terms of the autonomy of the service and its practitioners.
- ii. Changes in the status and role of the service, in particular in respect of its relationships and purpose within the criminal justice system.
- iii. The nature and extent of the devolution of power through expert knowledge and practice

At the *epistemological level*, a further three issues also evidence changes which support the overall argument concerning the welfarist to neo-liberal shift:

- iv. The (re)accreditation and reassignment of the power to speak the ‘truth’ to other areas of expertise outside of the probation service.
- v. The conceptual model of the individual that serves as the basis for problematising and understanding offending behaviour.
- vi. The shifting nature of the ethical dimension of probation practice away from a concern with the restoration of citizenship and toward one of risk reduction.

Below, I attend to the salient issues raised in each of these areas, dealing with the implications of the shift from welfarist to neo-liberal governance.

i. Autonomy and the Government of Government

Beginning with the changes at the level of the organisation itself, it is fair to say that for much of the twentieth century, the probation service was not overly troubled by the activities of central government. Indeed, perhaps the most fervent criticism of the nascent probation service addressed not its 'softly softly' approach to offenders, its lack of a punitive edge, but rather its intrusive nature and its capacity for compromising the rights of the individuals it sought to supervise (Home Office 1910a: para 18)⁶⁸.

It is possible to see the shifting relationship between the centre and the probation service in terms of various processes such as bureaucratisation or managerialism (McWilliams 1992; Oldfield 1994). Despite its origins as part of a moral crusade against drink (Shiman 1988), probation undoubtedly has evolved into a large scale bureaucracy – a fate typically encountered by such crusades according to Becker (1963). Yet for much of the twentieth century, the increasing interconnections between the mechanisms of central government and the service were driven by fairly mundane matters: rates of pay, superannuation and pensions matters (e.g. Home Office 1913; 1922). Training formed part of this apparatus although the Home Office actually relinquished control over training at the end of the 1960s. There seems little in the probation literature of this period to suggest centralised plans for increased control over the service. Despite the growth of links between centre and periphery, then, the overall ambition of the centre in the first seventy odd years of the twentieth century seems fairly limited and circumspect, attending to matters of administrative detail in a service which was *in* but not truly *of*, the criminal justice system. This point can also be argued in terms of legislative activity. Changes in the law affecting probation practice were fairly few and were far from drastic in their impact. Moreover, such changes tended to reflect the consideration of Departmental Committees which appear to have functioned almost as reformist think-tanks and whose recommendations tended to have positive and expansionist effects upon the activities of the probation service (eg. Home Office 1910; 1936; 1962).

In contrast, the last twenty years have seen the growth of neo-liberal mechanisms which have finally resulted in the incorporation of the probation service within a centralised system in which prison and probation are seen as complementary aspects of the punitive process. During the 1980s, the activities of the service increasingly were subjected to a process of problematisation and challenge to their traditional semi-autonomous role. Once problematised, these matters were opened up to new solutions that drew upon the emerging neo-liberal discourse. The growth of such developments-given impetus by the election in 1997 of a Labour government- reflect what Dean (1999) refers to as the "government of government" and indeed, one sees now within the new National Probation Service, clear structures of management aimed at both setting the agenda for, as well as controlling, the conduct of probation's activities. The semi-autonomous nature of probation is now replaced with lines of direct accountability to the

centre, where a National Director will report directly to ministers. What has particularly changed here is the welfarist position which saw probation operating *alongside* the mechanisms of criminal justice, offering its own solutions and critique upon the functions of other elements of that system.

ii. Probation's Role and Status

Given that probation deals with a significantly higher number of offenders than does the prison system, it seems appropriate that the service should enjoy some status within the criminal justice system. Indeed its status was one of concerned professionalism, offering a constructive alternative to the austerity of 'pure' punishment. Yet this status of probation which developed under welfarism served within a neo-liberal frame of governance to undermine its work. "Do-gooders" and "soft" social workers are not the stuff which neo-liberal politicians like to parade before the electorate. The political debate over crime seems increasingly to involve a bidding war over how many people should be sent to prison. The very premises of welfarist probation are at odds with a political rationality in which the active, autonomous, self-regulating, market-negotiating individual plays a central role. Behaviour becomes seen as either acceptable or unacceptable. Crime is cast as a rational choice to do bad, contradicting welfarism's optimistic search for a cure to such a social ill. Thus, the vague, needs-oriented ameliorative projects of welfarism, in neo-liberal discourse are reframed as leading to passivity and dependency. Intervention, according to a neo-liberal approach, should be aimed at delivering punishment to incapacitate or correction to enable reskilling. It is useful to consider here O'Malley's (1999; 2001) advice to consider contemporary political discourse as actually comprising two distinct strands of thought: the neo-liberal and the neo-conservative, with the neo-conservative train of thought informing the desire for punitive and retributive approaches to crime whilst the neo-liberal train addresses concerns of efficacy and cost effectiveness. Within such a discourse, the old welfarist logics of social justice, citizenship and therapeutic interventions are refused as failing to address the problem adequately, as pampering to the offender and as neglecting the victims of crime. Accordingly, for many criminals, prison now becomes the punishment of choice with actuarial assessment deployed to determine the threat posed by the individual offender. Rather than the welfarist inclusion of the offender, neo-liberal society now operates as an "exclusive society" (Young 1999).

From a somewhat ethereal and detached role, then, probation emerges in the new national service in partnership with the prison: supervising those whose crimes do not quite qualify for imprisonment and working with those in prison and supervising them on release. The activities of probation and prison converge around a series of prescriptive methods for effecting change. This is particularly exemplified by the reconfiguration of direct probation work with

offenders, informed by the “What Works” movement, of which the Probation Inspectorate have been a major promotive force.

From the face-to-face influence of casework, probation is now moving explicitly toward to the delivery of standardised and accredited programmes aimed at the constitution of neo-liberal selves and which I discuss below in dealing with the epistemological shifts in probation.

iii. Expertise and the Devolution of Power

In a Foucauldian study, power is always a central concern, particularly so since Foucault’s work emphasised the pervasive and capillary nature of power within systems of knowledge and practice. As I have described throughout this study, a key feature of welfarist government has been the allocation of areas of the “social” to particular branches of expertise, each of which performs a governmental function over its specified realm. This devolution of governance not only invested the figure of the expert with particular powers but, by its very devolved nature, made such a professional into an autonomous figure, acting in the interests of his or her clients/patients according to the knowledge base in which the professional person was embedded by virtue of training and qualification. In probation, it is possible to see how the early missionaries’ activities created a space within which expertise grew: the “moral individual” mutated over time into the expert practitioner. Probation, within welfarism was a “form of social casework which requires in those undertaking it special qualities of personality and special training and experience” (Advisory Council on the Treatment of Offenders 1963:17). Welfarism abounded with such experts of the social and actively sought to facilitate and enhance their work, a work whose governmental efficacy depended upon “the extent to which an offender’s will towards socially conformist behaviour can be harnessed” (Monger 1967:21).

Neo-liberalism, in contrast, does not hold with this notion of the devolved, autonomous powers of the professional practitioner, relying upon structures and systems of accountability to shape what Power (1996:14) refers to as an “Audit Society” characterised by “ritualised practices of verification whose technical efficacy is less significant than their role in the production of organizational legitimacy”. For the new, emerging neo-liberal probation service, such practices of verification replace the former belief – and trust – in the ability of expertise. In its place, accredited programmes are created apart from practitioners – since their knowledge base is no longer assumed to be capable of informing such work technically – and are delivered according to a fixed and auditable format. The creation of a “Core Curriculum” (Home Office:1999a) of programmes reflects a similar process implemented in the education system in which the content and delivery of (formerly) professional work is stipulated according to regulative procedures designed outside the immediate realm of professional activity. By the creation of measurable, controllable programmes, work can be redefined into auditable procedures. The welfarist devolved nature of probation expertise is thus largely reversed: if welfarism comprised systems

of trust, it might also be argued that neo-liberalism encompasses systems of mistrust whilst expertise is now assigned to others outside the immediate environment of the service. Power is thus no longer *devolved* to the individual practitioner in terms of he or she acting upon beliefs, experiences and judgements shaped by professional knowledge. Instead, the power to effect change is constrained within prescriptions for practice which originate elsewhere.

The above three sections thus delineate broad shifts at the organisational level. In the following sections, I address change at the level of probation knowledge and practice.

iv. Speaking the Truth: the role of the expert

The emergence of probation from philanthropic origins continued philanthropy's emphasis upon the "moral personage" – the individual who, by virtue of character, vocation and personality, could influence others in a beneficial manner. With the growth of welfarist rationality, this virtuous individual's quality became translated and transformed into a technical role. The ability of the probation officer to uncover the facts underpinning an offender's behaviour reflect a quasi-scientific faith in the activity of inquiry and supported a conception of behaviour as being determined – or at least conditioned- by a variety of influences. Again, whilst this activity emanated from practices of moral inquiry, the practice itself lent itself to being understood through the more technical discourses of probation practice which developed during the twentieth century. Additionally, Christian practices of investigation and understanding employed a conception of the offender which located a series of hidden problems beneath overt offending behaviour and which addressed them through a process of confession and reflection. Little wonder then, that such practices lent themselves to being reformulated within psychological discourse during the 1920s and 1930s, given the isomorphic resonance between the precepts of missionary work and those of psychology in terms of their reliance upon similar models in which change is effected through reflection and insight. Both possess a revelatory quality and both rely upon the work of an individual in face-to-face contact with the offender.

For the probation service in neo-liberal society, the 'truth' still possesses a certain evangelical lustre. This truth, however, is now generated through research and its translation into templates of practice which are passed on to those who will deliver them. Embedded into these templates are prescriptions for carrying out such activities and which hold that effectiveness will not result unless activities conform to the models of practice prescribed. In such a way the truth is guaranteed by adherence to the true ways of practice.

V. Models of the offender

Welfarist models of the individual have been depicted in this study in terms of their pathologising nature and their focus upon the determination of offending behaviour. Within what I have depicted as the period of welfarism –roughly understood as encompassing the period

between the start of the twentieth century and the late 1970s -there are two central elements to understanding the individual: at the psychological level of adjustment and at the level of social experience. Often the two were seen as parallel or complementary processes, to be addressed in a similar manner: "our attitude must be 'How can we cure the offender?' and not 'How can we punish him?'" (Harris, 1937:9). Social justice was to be achieved through assisting the individual to function appropriately by addressing the problems of maladjustment, inadequate socialisation and deprivation identified as conducive to criminal behaviour.

The shift away from individualised psychological intervention in probation during the late 1960s seems to represent, at least partially, an intensification of probation's immanent concern with social justice. This post-casework period saw an increased emphasis upon the material and practical nature of probation work, with the individual offender being steered away from crime through assistance in utilising the services of the welfare state. Raynor summarised this perspective nicely: "As social actors we do not start equal, and it is not fair or realistic to expect some offenders not to offend unless their opportunities to survive without crime are improved" (1980:181-2).

The return to psychology during the 1990s might seem at first glance to represent a return to previous conceptions of the individual – given that the casework method was predicated upon psychological knowledge. But this is much less obvious when one considers how cognitive behavioural interventions in the 90s as evidence neo-liberal assumptions and beliefs about individual behaviour. Rather than a search for deep meanings, cognitive behavioural techniques take as given the autonomous, self-governing individual as a baseline of normality. Whereas the earlier Freudian influenced methods of social casework had sought to uncover the hidden truths that lay beneath problematic behaviour, cognitive behavioural approaches in probation are typically neo-liberal, being driven by considerations of risk and risk reduction, as well as being relatively cautious in their ambitions – focusing upon certain types of behaviour or reactions to particular situations. This reliance on risk results in a kind of universally applicable diagram of motivation that transcends social or cultural effects (Andrews and Bonta 1994:231). Thus neo-liberal conceptions of the individual tend to produce acontextual and universal sets of ideas which can be ported across lines of class, race or gender. These sets of ideas inform a model of individuals as bearers of risk, thus presenting problems of risk management whilst overriding any concerns linked to issues of asymmetries of power and advantage, discrimination or other structural factors. Such concerns, argue Andrews and Bonta are irrelevant to the ecumenical issue of implementing "What Works" and should be avoided: "Do not get trapped in arguments with primary prevention advocates who believe that a society-wide focus on unemployment, sexism or racism will eliminate crime" (Andrews and Bonta 1994:237). A concern with history, the retrospective orientation which characterised welfarist approaches, is thus replaced with a prospective orientation: biography is supplanted by potential.

vi. The Ethics of Intervention

Probation interventions have, in the Foucauldian sense, an ethical dimension. That is, they invite the individual to reconsider him/herself in certain ways. Such interventions provide “technologies of the self” through which subjectivity is reoriented or realigned. In welfarist practice, this work at the level of subjectivity invited the individual to reflect and reconsider his/her experiential biography, in order to identify, recognise and neutralise the problems that led to offending. By overcoming the effects of the disruptive dynamics of modern life, the individual would engage or re-engage, in appropriate and conventional behaviour. Rehabilitation thus involved an interaction between the problem individual and an appropriate governmental resource, in the form of the probation officer.

In contrast, the result of neo-liberal intervention is an individual better able to manage him/herself under the conditions which predispose him/her to criminal behaviour. Self management is achieved through the development of new cognitions, patterns of thinking which pertain to social skills, problem solving, violent behaviour, hostile attributions and so on (e.g. *inter alia* McGuire 2000; Hodge, McMurren and Hollin 1997; Blackburn 1993; Hollin 1990). There is, accordingly, a new ethical approach in that, whereas welfarist interventions sought to restore social competency as part of a citizen’s rights to be “cured” of some social ill, the new ethics of neo-liberal probation focus upon conformity and rational, standardised behaviour as representing a reduction in an individual’s risk level. Where an offender refuses such intervention and, in the terminology I have used in the previous chapter, *refuses governance*, then a more punitive response may be required to contain the risk. There is thus less of an emphasis upon social justice and more upon conforming to the instruction of the court to take part in a programme with the threat of further sanctions to come if risk management is not attempted or achieved.

These trends, traits or tendencies of transformation and mutation, I submit, offer evidence of change in the probation service, change which indicates new problematisations and solutions which have moved or are moving, away from those of welfarist discourse. I now turn to the pre-sentence reports analysed in chapter 6 and which offer examples of probation knowledge in action.

The Neo-Liberal Individual in Pre-Sentence Reports

The empirical study of the discourse of pre-sentence reports in chapter 6 depicts probation reports as identifying two different rationales to be addressed in reaching proposals. On the one hand, there is a model of the offender which corresponds to the neo-liberal individual discussed above. Such an individual is, within the categorisations deployed in analysing the reports ‘stable’ in that his or her life evidences instances of governmental mechanisms thought likely to ensure law-abiding behaviour in the future. Some of these offenders were identified as

responsible, others were not, although the lack of responsibility for stable offenders tended to be more connected with temporary inhibitors of law-abiding behaviour rather than deep-rooted problems. It was, however, the presence of stabilising factors that led to the conclusion that a non-interventive punishment was enough to 'correct' future behaviour. I have suggested above that, in many cases, this correction is analogous to raising the 'cost of crime' through deterrence. This analogy is appropriate in terms of the neo-liberal logic of such proposals although whether such a logic is ultimately successful is another matter. Nonetheless, those cases where offenders could be identified as likely to be governed appropriately through aspects of their own lives – in the sense of their conduct being affected and mediated in pro-social ways by existing arrangements, relationship and structures- tended to be dealt with by non-interventive punishment, usually community service.

On the other hand, although the neo-liberal model of individuals accounts for some of the offenders in the sample, others were shown to have been dealt with by a welfarist logic which assigns them to interventions which seek to 'treat' issues in their lives connected to their offending. Such treatment is aimed at problem areas which are seen as playing a causal or at least correlative role in the individual's offending and which would be likely, if not addressed, to hinder or dilute the individual's capacity for self governance.

It is interesting to note that, in cases where several reports had been written by the same officer, such reports did not employ only one or other of the two logics described above. In other words, the logic of the PSRs did not seem to be linked to a personal predilection for one form of explanation or the other. This coexistence of potentially contradictory discursive themes or logics indicates what Foucault has referred to as a "system of dispersion" within discourse – "various strategic possibilities that permit the activation of incompatible theme" (Foucault 1972:37). One might also depict these two logics of welfarism and neo-liberalism as "interpretative repertoires" upon which report writers draw as appropriate depending upon the circumstances they encounter in a particular case (Gilbert and Mulkay 1984). If this were done, then probation officers' thinking could be depicted as oscillating between issues of 'Justice' and issues of 'Welfare' whose relevance as a mode of explanation depends on the contexts and circumstances of the individual case.

Assessing the Extent of Change to a Neo-Liberal Probation Service

This study is founded on the premise that the changes at the level of macro-political discourse depicted in the governmentality literature are manifested in a reconfiguration of welfarist institutions and their practices. In arguing from this position, however, there is a need to be aware of the tendency to oversimplify this argument: social change is rarely a matter of 'either/or' : the dichotomisation of twentieth century life into welfarist or neo-liberal segments ignores or smoothes out, some the messy realities of social and organisational change, the

compromises, negotiations and accommodations that traverse even the most modest shifts in organisational patterns or expert technical practices. Nonetheless, this caveat heeded, it is still possible to argue the utility of this fairly broad brush approach in delineating the overarching political rationalities which permeate and mould the institutional practice of the probation service in the early twenty first century. From an examination of the shifts surrounding and within the probation service, there has been a clear pattern of change which, to a great extent, reflects the emerging governmental salience of those features and facets argued to characterise neo-liberalism. This study has been concerned to identify such patterns and to consider their impact upon the practices upon which they have been superimposed or have superseded.

At the organisational level it is clear that the service has changed dramatically over the course of the last decade. The creation of a new national service with its new lines of accountability stretching from central government through to each individual service clearly evidences a major shift away from the localised semi-autonomy probation enjoyed for much of the twentieth century. The probation service is now a large scale bureaucratic hierarchy with a much expanded centralised controlling body with various new powers of governance over policy and practice. This draws local services closer to central government and will increase the ability of government to implement policy innovations without having such implementation modified by resistance from the embedded interests of practitioners. New systems of monitoring, inspection and audit dovetail with the implementation of 'accredited programmes' to set in place methods which quantify the parameters of acceptable practice.

For practitioners, their status as acknowledged experts in their field has been rapidly challenged and changed. The role of the probation officer as 'professional' is most definitely changed – in particular, the ability to make autonomous decisions and to exercise discretion in the way that individuals are dealt with. This is reflected in the way that probation training has been changed.

The alteration in probation training has shifted the role and duties of the probation officer from being a generic professional to an individual capable of exhibiting certain competencies defined as necessary to deliver programmes to offenders. Such programmes are now to be devised and accredited by a new layer of expertise – psychologists- operating over and above that of practitioners. "Diagnosis" – a central element of welfarist expertise – is being replaced by the introduction of actuarial measures which, it is reasoned, will assign offenders to the necessary programmes in a far more effective and efficient way than subjectively constructed assessments. This renewed and relentless positivism from the centre is also evidenced in the way that successful practice is taken as involving the correct delivery of programmes according to the manual and with minimal deviation from the prescriptions for delivery set out in the manual – the so-called "programme integrity". As Castel puts it:

The specialists find themselves now cast in a subordinate role, while managerial policy formation is allowed to develop into a completely autonomous force, totally beyond the surveillance of the operative on the ground who is reduced to a mere executant (Castel 1991:281).

At the level of practice, there is a clear shift from techniques of help, assistance and advising – in Foucauldian terminology, the “pastoral” elements of practice- toward techniques of empowerment and enskilling aimed at the creation of a “prudential” subject. This subject will, by virtue of his or her participation in such programmes, become more adept at managing his or her risk level – abstaining from drug and alcohol abuse, using techniques of anger management and enhanced thinking skills and so forth. Rehabilitation in this new sense is linked to a reasoning individual⁶⁹ able to negotiate the social world in an autonomous manner and capable of making normatively appropriate decisions in the certain circumstances and situations.

Within these changes, one can identify a new model of the offender. In contrast to the welfarist model of an offender driven by his or her developmental and experiential biography, the neo-liberal offender is a much simpler concept: those who choose crime can expect to pay the cost: either imprisonment or, if the individual is not sufficiently “risky”, re-skilling through the community programmes of the probation service. The distinction can be made according to an assessment of the offender’s potential for offending.

The distinction made in this study between welfarism and the neo-liberalism of the late twentieth and early twenty first centuries should not be taken to indicate sharp discontinuities across the board, a sudden rift between welfarism and neo-liberalism. The changes depicted here can be seen to have occurred with varying degrees of intensity and rapidity. Whilst conceptions may change, elements of older systems may still remain – as was clear from the way that the religious conception of the offender provided a framework for a psychologically-based approach in the first half of the twentieth century. Probation services will still attempt to address offenders’ problems, often using other specialist agencies and services as they have in the past. But the overall aims will be different: risk reduction and management and with certain problem areas being accredited as taking priority over others – the “criminogenic needs” of the effectiveness literature. On the other hand, it is quite possible to point to similarities between a concern for the offender which seeks to promote his/her welfare in order to promote social inclusion and the approach of cognitive behavioural techniques designed to re-skill and, thereby, to promote a social inclusion. Such similarities do suggest that the figure of the “inadequate offender” persists, although understood and represented differently and provoking quite different political responses.

There is also a further continuity between the two political approaches discussed in this study. Both exemplify an obdurate positivist teleology in their approaches: the present is always the extant summit of progress and the future always promises a (re)solution of contemporary social problems. In this respect, one might note that contemporary neo-liberal approaches

embody a hyper-positivism, a renewed faith in the appliance of science. Welfarism also had such a faith in technical progress but this was embedded in notions of welfare which bound both state and citizen together in a nexus of rights and obligations structured by an overall (however vague in practice) ambition of social justice and solidarity. Neo-liberal positivism presents a technicised version of the individual in which effecting change becomes a form of managerialism, to be delivered and regulated according to rote. But the politically charged nature of such positivism allows it to present an argument for the rejection of all that has gone before:

One of the features of positivism is its tendency to destroy currently accepted facts as a pretext for further research. All that is required to accomplish such destruction is to note that current facts may not mean what they appear to mean. Once doubt about current facts has been established, the positivist modestly points out that knowledge to come will be better than current knowledge and should therefore be taken more seriously...[i]t makes knowledge we do not have always superior to knowledge we do have, and it allows us the luxury of pretending that all previous research has been for naught. (Gottfredson and Hirschi 1990:228-229)

Welfarism and neo-liberalism both display certain continuities despite their differences. They cling to a belief in progress, that the present represents the highest stage in an iterative historical process of knowledge accumulation and accretion. In welfarism this was embedded in a discourse of rights and obligations whilst in neo-liberalism, it represents more of a technical fix to an identified problem: issues of “how risky?” and “how dangerous?” speak to a language of actuarialism and prediction, a belief in the possibility of affecting the future. In this respect they both evidence a modern belief in the power of science (understood as a body or rather bodies of rigorous and systematically developed knowledge) to transform particular social problematics toward particular goals and objectives. To the extent that these two rationalities cleave to a faith in the ability to transform the future, they share a similar modernist lineage. To the extent that one disembeds its approaches from the rights and obligations of state and citizen, the differences between them emerge as representing more than a dispute over method or technique and reflect a profound shift occurring in the ways that crime is conceived in ‘Late Modernity’⁷⁰.

The pace of change has increased in tempo since this study began in 1995. The creation of a national actuarial system has reflected the arguments about the direction of criminal justice in the United States towards an “actuarial justice” (Feely and Simon 1992; 1994). There exists the possibility that the current sentencing review may recommend changes that will place the sentencing focus upon the capacity of what an offender *might do* in the future rather than what he or she *has done* as at present, in other words, replacing proportionality with risk. The new National Standards introduced in 2000 also reflect the “contradictory and volatile” nature of neo-liberal penalty, narrowing down considerably the margin for error of an offender on probation. Yet there is some paradox here. If an offender is given only one chance to miss an appointment before being breached and taken back to court, quite possibly resulting in a custodial sentence, what room is there here for the social-learning based approach of neo-liberal probation’s

cognitive methods? Offenders *must* comply with the rules yet are construed as unable to comply with general social rules because of their inadequate reasoning skills.

Reflecting on Change

I have argued throughout this thesis that there has been a significant change at the level of political discourse which is reflected in changes in the organisation and practice of the probation service. It may seem that this argument reflects a nostalgic defence of welfarism, a critique of the new and a resistance to change. Perhaps at one level it does, perhaps my enquiry is motivated by a reaction to the pace of change in the contemporary probation service. Such criticism may be misplaced: perhaps what I have described in this study is merely a realignment of probation with contemporary knowledge, a necessary and functional correction to the knowledge base of an outdated institution. Given that probation discourse throughout the twentieth century is littered with similar teleological understandings I remain somewhat sceptical of such a position. Certainly it is possible to point to the way in which probation's older, reformist strands which contributed to its dual role as both a component and critic of the criminal justice system, have become detached from the organisation as it slips away from the utopian optimism and aspirations of welfarism from which it emerged.

There is a certain feeling of "babies and bathwater" in the haste with which the reorganisation and revamping of probation is taking place. Even though the faith in "What Works" has yet to be confirmed and may yet be displaced or abandoned, there is little reason to suppose that the pace of change will diminish in the near future. Some have already begun to query the ecumenical nature of "What Works" and the necessity for its euphoric implementation (Mair 2000; Merrington and Stanley 2000). Nor, of course, is there any reason to believe that some version of the probation service will not play a role in the criminal justice system throughout the next century although the shape it takes is open to argument, given, as Foucault notes, the arbitrary nature of institutions (Foucault 1988c:162)⁷¹.

Ultimately, it will be the political rationality which defines and delineates what counts as appropriate social comportment that will influence how those who fail to measure up to such standards are dealt with. In terms of offending, I have depicted how such behaviour has been dealt with as being an evidence of an "inadequate" individual – even though such inadequacy may be subject at different times to disparate definitions of what counts as being 'inadequate'. Given the pragmatic nature of the way governance is enacted, it will still fall, one suspects, to the probation service to deal with those whose offending behaviour is judged to render them inadequate according to whatever definition is accorded salience at a particular time. This does not mean, of course that such a probation service (or correctional service) would resemble what those who have worked in probation for some time recognise as 'being' probation. The language of intervention is changing as well as its logics: the names of probation orders and community

service orders have already been changed to “community rehabilitation orders” and “community punishment orders” by schedule 7 of the Criminal Justice and Courts Act 2000.

There remains the task then, of trying to evaluate the benefits and drawbacks of these changes, after all, merely arguing that welfarist discourse has been overtaken by neo-liberal discourse is, in itself, a mere description of change, lacking any sense of analysis or critique. What, then, are we to make of the changes described in the above chapters? In this final section, I critically compare and contrast elements of change discussed above. In setting out such a commentary, a space opens for a political critique based upon the empirical work which has been carried out earlier. There is, it seems, a need to negotiate such a critique between an unswerving acceptance of the new and an obstinate adherence to the past. Critical reflection opens a space for a *considered* resistance to change rather than an emotional reaction to it. Not all change is necessarily bad, but then again, perhaps not all change is necessary. Caution and consideration seem to have been swept side by the euphorial impetus of “What Works”. However, as Foucault once noted, it is not that everything is bad, but that everything can be dangerous, thus requiring a constant vigilance and struggle, a political engagement (Foucault 1984:343).

I structure this critique around two elements: those of professional practice and the associated knowledge base that informs that practice. I have refrained from addressing issues of structural organisational change for two reasons. Firstly, it seems to me that organisational change in itself is not necessarily a bad thing: an agency which resists adapting to its contemporary circumstances is destined to be sidelined or marginalised as irrelevant or inept. Secondly, there seem to be no particular reason why a criminal justice organisation should operate, as probation did for a long time, at arm’s length from the rest of that system. In this sense the ‘joined up thinking’ advocated by the present government seems to offer a sensible reconfiguration of probation’s position within the criminal justice system. History proceeds at an uneven trajectory, and the emergence of probation evidences false starts, dead ends, uneasy alliances and long-forgotten ambitions, whose contributions to the growth of the service are long buried in probation’s own myth of itself: that of the emergence of the service from middle class do-gooders before its eventual transformation into a professional organ of social work (e.g. NAPO 1957). Tracing the genealogy of probation, it is clear *how* this arm’s length relationship developed, through the incorporation of elements of religious philanthropy into a role which offered a vaguely defined solution to a widening problematisation of behaviour. Over time, probation moved from being concerned with issues of governance pertaining to somewhat trivial offences linked to issues of order to issues pertaining to crimes of a much greater magnitude. A religious base was appropriate for the work whilst ever it was considered within a discourse of moral failure. That management of probation officers remained partly effected by religious agencies for so long is surely due to financial expediency: the Home Office were content to

receive the generous contributions of the religious agencies for a long time before such a relationship itself became problematised.

Change at the level of organisation, then, might be seen in purely neutral terms were it not for the fact that such organisational change tends to occur in response to shifts in political discourse which address the role and purpose of that organisation. Changes at this level mark new political problematics which require operationalisation into technical solutions. But the technical solutions to such problematics are translated from political discourse to practical action through the rationality of the agency allocated to dealing with that problem. It is at the level of the vocabularies and logics of practice, then, that I have located my critique of the neo-liberal shift in the probation service.

Probation Practice and Knowledge

Discretion forms an important part of professional practice: the relevant expert exercises his or her discretion on the basis of judgements made using his or her training and knowledge. Thus, within welfarist probation practice, the individual officer had great leeway in defining and dealing with his or her clients, with an emphasis upon the development of a special relationship between client and worker. (Such a concern for a positive interaction between the subject of intervention can be traced back to the old practices of nineteenth century philanthropy, of the power of influence of the “moral personage”). Discretion enabled the probation officer to respond to the individual circumstances of the case, to ‘cut some slack’ for the offender where it was thought necessary or to be more forceful as the case demanded. Whilst probation was originally based upon faith – in the religious sense – it later became for its practitioners an act of faith itself – in its knowledge base and in its *raison d’être* as an instrument of social justice (Halmos 1965).

The casework approach, predicated upon a semi-Freudian approach was able to encompass the possibilities of the relationship in terms which explained hostility, identification, rejection and so forth. The late 1960s shift toward a more materialist social work still retained the expert role for the probation officer, it merely reframed outcomes and the means for achieving them whilst retaining the ‘pastoral’ role of the probation officer. The problems associated with discretion seem obvious: those of the homogenisation of individuals’ problems, yet addressing them using an idiosyncratic, individualised approach. Discrimination was both a potential and a real threat. Since there was little to take as a baseline of good practice, what was done with or to offenders depended upon their probation officer to a large extent. The reliance upon discretion was almost enshrined within law with the 1969 Criminal Justice Act, under which probation officers and social workers would have replaced sentencers in making decisions as to the sentencing of young offenders. The relevant sections of the Act, however, were never implemented, although the potential dangers of such unregulated discretion were evident in the

way that the late 1970s and early 1980s saw a large increase in custodial sentences upon young people attributed in the main to the unchecked discretion of social workers (Thorpe, Smith, Green and Paley 1980). Later studies have also documented the disparities in the ways that probation dealt with its clients in terms of their gender (Worrall 1990) and race (Denney 1992). So, whilst welfarism relied on expertise across a panoply of governmental agencies and institutions, the outcomes of the interventions effected by such institutions were not above reproach or criticism. Expertise is often a matter of attribution as well of technical prowess.

Discretion in the neo-liberal probation service is designed out of service delivery through the creation of a 'effectiveness principle', that of *programme integrity*. Programme integrity holds that services should be designed in advance and delivered according to the manual. Success is tied to an adherence to treatment protocols. The *amount* of intervention is also to be decided through actuarial assessment, based upon the *risk principle*, whereby higher 'dosage' interventions are reserved for higher risk cases. Two questions which welfarist probation officers would have addressed, then, the first "what needs to be done?" and the second "how is it to be done?" -questions which required a professional judgement – are now answered using allocative technologies which provide the answer without recourse to the potentially diverse considerations of individual staff. From a critical viewpoint, neither approach seems wholly satisfactory: the welfarist model allocates wide ranging power to officers whose professional decisions could ultimately result as much from prejudice as professionalism. On the other hand, the ability of actuarial instruments to successfully indicate those for whom a particular interventions is suitable seems to lack a certain human element, as does the necessity, implied by programme integrity, to stick to a mode of working which ignores or sidelines any other issues which may emerge. How, (and indeed whether) offenders experiencing a major life crisis will engage with an abstract programme designed to enhance their reasoning skills is not yet clear. The ability to be flexible was inbuilt into welfarist probation's aim to "assist, advise and befriend" the offender, forging a relationship based on trust and mutual respect in order to engage the individual in dealing with the problems and pitfalls of his or her life. It may be more difficult to achieve this when the main aim of probation is to get offenders through a structured pedagogic programme.

Considering the Implications of Neo-Liberal Practice

Welfarism's focus upon social and personal pathology had several implications which seem distinctly questionable. The focus upon the 'inadequate' offender tended to cast he or she as a victim, whilst ignoring the actual victim of the offence. Whilst it is certainly true that certain offenders would fit into a broad category of 'victim', it is less clear how others would and the probation service has been criticised for its general reluctance to engage with victim issues in the recent past (Nellis 1995a).

The pathologisation of crime required probation work to reconcile individuals with their biographies, working through unresolved issues and intra psychic tensions to resolve those problems. Later social work practice would seek to address a more social pathological model, seeing offending as springing from socially determined causes and seeking to address these through assistance in negotiating the Byzantine welfare network. As a model for practice this avoided confronting offending behaviour directly and contributed to or even colluded with some offenders' own sense of grievance without addressing directly their criminal activities. On a more positive note, however, welfarism did embrace notions of social justice, locating welfarist intervention(s) within the nexus of rights and obligations embedded in the welfarist social compact.

In contrast to this complex determinist model of the person, neo-liberal probation operates upon a diagram of an acontextual individual supplied by psychology. This diagram of motivation and behaviour also provides a homogenising model for practice and makes certain assumptions about the causes of offending in terms of their relation to patterns of thinking and rationalisation. Whilst certain needs are authorised as being 'criminogenic' the main focus is upon the creation of a rational subject. The rationale here is not predicated upon social justice but rather upon *harm reduction*, dealing with the risky individual and enabling him or her to manage their own risk through the skills imparted by probation programmes. Related to this model is an aggressive stance which characterises the proponents of the new neo-liberal approaches. Where practitioners may be resistant to this new 'treatment model', those championing the approach are enjoined by two of its more well known exponents to

Recognise that many professionals may be antitreatment because they have been trained in intellectual traditions that are antitreatment. They are not evil and they are not stupid...Their training, attitudes and differential association patterns make it difficult for them to recognise the evidence...Do not get trapped in arguments with primary prevention advocates who believe that a society-wide focus on unemployment, sexism or racism will eliminate crime. (Andrews and Bonta 1994:237).

There is, from such a position, no alternative. Science (that is to say psychology) provides the evidence and all resistance should be overcome. Yet overcoming resistance is not effected without power, and it is, I suggest, the close resonance between neo-liberal rationality and psychological discourse that has imbued the 'What Works' initiative in England and Wales with such momentum. Specifically, psychology speaks a language of inputs and outputs, of measurable change and tangible and demonstrable effects, through actuarial predictors, risk assessments and psychometric measures. In short, psychological discourse provides the means for its own audit. This, then, perhaps explains the attraction of the new modes of practice to a government engaged in revising the public sector within logics of risk (Taylor-Gooby 2000) and audit (Power 1996). From the utopian civic optimism of welfarism to the cautious monitoring

and measurement of neo-liberalism, it is political will that gives certain modes of practice their tenacity and coherence.

Given that probation involves a certain work upon subjectivity – ‘shaping the conduct of conduct’, such work must be grounded in an ethical stance since it requires such work to be undertaken at the mandate of the court. There must be, in other words, some form of moral element to the forms of intervention deployed by probation. Earlier in this study I have depicted welfarist probation as grounded in an ethics of mutual obligation between state and citizen. I now turn to the ethics of the emerging new neo-liberal practices of probation.

It has been argued (Beck 1992; Feeley and Simon 1992; Giddens 1991) that risk has become a central means of classification and understanding, replacing previous emphasis on class as a means of understanding the social and cultural dynamics of life in late twentieth century society. Within a neo-liberal governmental rationality, risk can be seen as offering a more conducive means to both understanding and acting upon society than class, race or gender: these concepts, as explanatory discourses of social relations, bring with them their own lexicon of cause, effect and morality, together with an historical narrative of the way modern society has been administered along these various dimensions, with deleterious consequences for those disadvantaged as a result of their membership of certain categories – the poor, women, Black people. By replacing such labels with the apparently politically neutral conception of risk, the tensions that these other categories introduce into the neo-liberal market-based order of rational actors, in terms of problematising such social relations, are obscured or dissolved. We might say that the central social problems of the nineteenth century connected to the ‘dangerous classes’ (Morris 1994; Garland 1985; Rose 1985) have, within neo-liberal discourse, resurfaced as connected to ‘the dangerous’. The project of identifying such groups and individuals is clearly acknowledged by two proponents of the ‘What Works’ movement as a central task of psychology, whose expanding knowledge base I argued to make it “possible to identify individuals and families who are at risk for [sic] criminal conduct” (Andrews and Bonta 1994:232).

The ethical problems associated with the increasing saliency of risk, then, relate to the ways in which risk assessments generalise from large scale research to make predictive statements about individuals on the basis of their statistical conformity to certain group characteristics. Risk models thus involve a shift in focus from individuals toward statistical relationships (Silver 2001:136). They provide neat solutions to the untidy problems and vagaries of the lives of those individuals who come into contact with the criminal justice system. As Quinsey *et al* put it, a “great strength of the actuarial approach is that the relationships can be used without knowing for certain that they exist” (Quinsey, Harris, Rice and Cormier 1998:137). For Feeley and Simon, the end result of actuarial justice is oppressive: “the new statistical techniques for assessing risk...are not anchored in aspirations to rehabilitate, retrain, provide

employment or the like. They are justified in more blunt terms: variable detention depending upon risk assessment (Feeley and Simon 1992:457). However, there is a danger in seeing such actuarial schemes as merely designed to enable the incapacitation of 'risky' individuals when in fact their aims may be otherwise. The 'What Works' movement, for example, utilises risk assessment to suggest 'level of service' – the intensity of (psychological) 'treatment' necessary to reduce the criminality of an individual (Andrews and Bonta 1994).

Need and risk based approaches have both gendered and racialised dimensions at odds with their purported scientific methodologies whose aim is the production of an objective and value-free knowledge (Douglas and Wildavsky 1982). Above I have discussed the issues of 'need' in terms of its neo-liberal delineation into a set of acceptable areas of concern – most of which tend to be highly individualised variables that detach concepts of need from any social structural understanding of offending. I have also noted the critique by Hannah-Moffatt (1999) of the way such needs are extrapolated from research based almost entirely on men and which, therefore, can only be transposed into practice with women at the expense of relevance and appropriateness – in other words by undermining the very principle of 'evidence based practice'. The use of risk measures also threatens to impact unevenly in terms of race. Risk scales utilise components which correlate highly with race and therefore include racial and ethnic factors by proxy into the calculation of risk (Hudson 1995:14). Both these potentially discriminatory factors highlight the political nature of research and knowledge in terms of its ability to impact unevenly and unfairly upon certain groups whilst proclaiming its political and moral independence. This impact is sidelined by the proponents of acontextual psychological approaches who disqualify issues of race and gender by arguing that " [t]he same sets of risk factors appear to be involved with categories of geography, class, age, gender and ethnicity" (Andrews and Bonta 1994:231)

Conclusion

This study has addressed the shifting configurations of practice in the probation service in the late twentieth and early twenty first centuries. I have outlined how these practices deploy logics and vocabularies which imbue the assumptions of welfarist and neo-liberal discourse. At a macro-level, this change has been depicted by tracing the outlines of general patterns of political discourse onto the discursive contours of the probation service. The distinction between welfarist and neo-liberal approaches has been relatively easy to make at the organisational level. At the micro-level of contemporary practice, in my examination of pre-sentence reports, less so. The distinctions between welfarist and neo-liberal modes of practice can usefully be sketched out against Feeley and Simon's argument that a 'new penology' has been emerging over the last decade or so. Feeley and Simon argue that the old penology was "preoccupied with such concepts as guilt, responsibility and obligation, as well as diagnosis, intervention and treatment of the individual offender" (Feeley and Simon 1994:173). In contrast, the new penology is

concerned “with techniques for identifying, classifying and managing groups assorted by levels of dangerousness” (Feeley and Simon 1994:173). This distinction is useful in that it can be seen to differentiate political discourse, in terms of its rationales, objectives and so forth, from actual instantiations in practice. The process of translation from abstract concepts to specific technical solutions may well entail these solutions failing to match the ‘purer’ concepts. Processes of negotiation, accommodation and compromise lie between governmental ambitions and their realisation as governmental activities.

Overall then, I would submit that the organisational changes which are taking place in probation mark a substantial transition toward neo-liberal ideals. The embedding of processes of audit, monitoring and quality control typical of this neo-liberal ‘government of government’ are clear cut and have an obvious potential for shaping the direction of probation practice and ensuring conformity to the principles which are now said to guarantee effectiveness (Power 1996). The bureaucratic apparatus of such systems of accountability calls for practice to be measurable and operationalised in empirical data. This reorganisation and reconfiguration of probation’s organisation, then, can be seen as reflecting structural change which reflects the philosophical questions of neo-liberal political rationality within which the *raison d’être* of the organisation is construed (Carrabine 2000). The probation service within the meta-discourse of political rationality, is ‘about’ risk management and reduction, tougher enforcement and punishment. The extent to which this connects to what actually happens, however, is another matter.

The changes at the level of practice depicted within this study have evidenced both change and continuity. The introduction of new interventions predicated upon psychological knowledge reflect the way that psychology provides an excellent model for neo-liberal ‘corrections’ with its eminently quantifiable and measurable language of inputs and outputs. To this extent, neo-liberal practice is clearly demonstrated. Then again, whilst the psychological methods of cognitive programmes provide a discourse which speaks to neo-liberal concerns with quantification, they also undercut other political ambitions pertaining to toughness, since these cognitive interventions derive from therapeutic, rather than punitive, modes of working (Trower, Casey, Dryden 1988).

Also, the introduction of new forms of working is occurring alongside other forms of working which reflect older methods and approaches. Indeed, the Pre-sentence reports whose discourse was analysed in chapter six provide an example of just such an approach, relying as they do on a method in which diagnosis and treatment can be readily discerned as organising concepts (although these are not overtly articulated). Within the empirical work on pre-sentence reports, it was often the case that welfarist precepts and assumptions co-existed alongside neo-liberal concepts: The report formed a hybrid technology which spanned both welfarist and neo-liberal rationalities to varying extents. Whilst pre-sentence reports are still being written in a

similar fashion at the moment, there is change afoot which may see such reports dispensed with or radically changed. Such changes may possibly occur as a result of the introduction of OAsys – the actuarial instrument designed by prison psychologists for use by both probation officers and prison staff (Home Office 2000). One scenario would be that the results from this scale would be sufficient for sentencers to allocate offenders to particular programmes without the need for a full pre-sentence report. This would indeed be a radical change from the tradition of social inquiry introduced into the legal system by the Police Court Missionaries in which the inquirer sought to discover something positive about the offender: within a neo-liberal discourse of risk, inquiry seeks only to identify the potential for, and likelihood of, harm.

Writing at a time of change may also be a drawback to providing an adequate account of change since it is not yet possible to say to what extent the probation service will be changed. Nonetheless, I believe that I have demonstrated that the forms of organisation and knowledge which now constitute the National Probation Service of England and Wales (as it now is) demonstrate that there is clear evidence of structural and epistemological change and that such change corresponds to the shifts in the political rationalities that I have termed ‘welfarism’ and ‘neo-liberalism’. Despite being able to evidence such change, I have also found evidence of hybridity – of accommodation and incorporation – which reflects the ways in which political ambition is mediated by the distance it must travel before being articulated in governmental terms. Finally, it is also the case that both rationalities take as their subject the offender who, for whatever reason, is unable to fulfil normative expectations of behaviour, a failure I have dubbed as an ‘inadequacy’ in personal comportment. Such inadequacy is reframed and reconstrued according to the epistemic discourse applied to it, but, nonetheless, reflects a central concern with the behaviour of those individuals whose offending is linked to a failure to conform to certain standards and concepts of normality. For the time being, it seems that probation operates- and has operated over the last century- as a hybrid technology, whose concern is to articulate an account of, and offer a plan for governmental intervention into, the lives of those individual offenders defined, according to prevailing political and epistemological conceptions, as in some way “inadequate”.

Footnotes

- ¹ The Scottish Probation Service is organised in a different manner, under Scottish law.
- ² And such an argument has been around since the mid 1950s: see, for example, NAPO 1957
- ³ For example one might say “she is mad” and the attribution of insanity would have little import. If, however, one were speaking as a psychiatrist, then the statement takes on a whole new tenor and material weight due to the implications and assumptions that underpin one’s role in the articulation of a discourse that is accepted as ‘knowing’ about madness and which is deemed competent to recognise the phenomenon in others.
- ⁴ The work of Quetelet provides an example of the migration of statistical techniques from the domain of calculating predictability to that of measuring deviance in the individual. Applying the theory of a normal distribution of measurements pertaining to astronomical measurement to human variables, this “surprising testimony to the power of the methods of celestial mechanics bolstered Quetelet’s long-standing claim that the social sciences could do no better than to imitate the physical” (Porter 1986: 100). Quetelet’s work led him to search for the ‘average moral man’, reasoning that errors or deviations in statistical terminology were reflected as deviance in human terms (Stigler 1986).
- ⁵ For example: Harmonious behaviour in school or the workplace, ‘normal’ sexual conduct or any other non-problematic behaviour that can be said to be ‘normal’ according to the mores, standards or rules of society.
- ⁶ Since the empirical content of this paper pertains to the probation service in England and Wales, the contextual background of welfarist government and its neo-liberal successor, is specifically directed at a depiction of the British model.
- ⁷ The 1911 National Insurance Act introduced the plan for a state-run insurance system which would foster a “certain assured measure of security and safety against hazards and misfortunes”(Churchill 1909, quoted in Bruce 1973: 147).
- ⁸ Magistrates Courts as they are known today.
- ⁹ In 1860 there had been some 3,993 persons received into custody as a result of offences of drunkenness and being drunk and disorderly - 4.5% of all disposals in the Police Courts. By 1876, this number had risen to 23,665 - 11.5% of all disposals that year (Harrison 1971: 398).
- ¹⁰ The CETs had been founded in 1861 as the Church of England Total Abstinence Society. Perhaps due to a lack of conviction in total abstinence, this name was changed in 1863 to the Church of England Reformation Temperance Society, changing again in 1872 to CETs.
- ¹¹ By 1899, CETs had 7000 branches, 100 Police Court Missions and between 150,000 and 200,000 subscribing members. “Its size was not the only virtue by which it claimed to have an influence in English life. The CETs had the ear and the voice of many well-established figures, both in and out of Parliament, who would not have associated with other sections of the temperance movement” (Shiman 1988: 107).
- ¹² One of the early missionaries, for example, a George Nelson, listed the number of visits made during the year ending March 1878, showing that visits to cab stands occupied a large part of his time:
- | | | | | | |
|-----------------------|-----|------------------------|-----|-----------------------------|-------|
| Police Court Visits | 473 | Large works visited | 172 | Cab stands visited | 1,143 |
| Prison visits | 34 | Railway station visits | 90 | Homes visited | 754 |
| Police station visits | 38 | Pledges taken | 426 | Fire Brigade station visits | 19 |
- (Ayscough 1923: 16-17)
- ¹³ Some of whom had proved an almost intractable problem for male missionaries, if the Church of England Temperance Society report quoted by Thomas Holmes is any indication: “...I must say that I am nearly baffled as to what to do with them. I have done much to save the poor victims, but it seems to me to be working hope against hope. I am fully persuaded in my own mind that they should be placed under medical care and enforced abstinence” (quoted in Holmes 1902: 18).
- ¹⁴ The London Police Court Mission Annual Report 1889 describes the routine activities of the missionaries:
- “the missionaries are at the court for some time before the magistrate takes his seat on the Bench, and during this time they make acquaintance, in the cells or in the prisoners’ waiting rooms, with those that are about to be charged. Then, as each prisoner attends in the dock, the missionary being in his place in court, the magistrate will constantly ask what can be done for this or that case. At the suggestion of the missionary many cases are put back till the afternoon, or remanded for a longer period for the purpose of investigation, and the magistrate and the missionary often consult together on various cases.” (quoted in Heason 1962: 181)
- ¹⁵ The use of the probation officer’s information in a quasi-scientific manner to inform further practice was recognised explicitly by the Departmental Committee set up to examine the initial workings of the new probation service:

"The reports furnished by the probation officer inform him [the magistrate] of the results, in practice, of his action; he can tell whether his clemency has been justified or not. He gathers material to guide him in future cases" (Home Office 1910: para 5).

¹⁶ The Summary Jurisdiction Act 1879.

¹⁷ There had been debate as to the suitability of former policemen for the role of probation officers, although this was not thought desirable, nor was the appointment of those involved in prison work, for fear of the contamination of lesser offenders. The employment of men and women of 'higher class' who provided the Charity Organisation Society with its members was also thought desirable (Bochel 1976: 25). The solution as to who would provide the service, however, had already been mooted: the agents of the voluntary societies who now serviced the Police Courts would be employed as part-time probation officers.

¹⁸ Not only were the missionaries to the courts from the established church, although the CETS provided the majority of missionaries. Le Mesurier notes that missionaries were provided not only by the CETS, but by the Society of Saint Vincent de Paul, the Discharged Prisoners Aid Society, the Church Army, the NSPCC and the Salvation Army (1935: 189). Some female missionaries were also provided by the British Women's temperance Society although CETS provided "the typical police-court missionaries" (Gamon 1907: 162).

¹⁹ The Home Office Children's department described the method of record keeping introduced by the London probation committee:

"The particulars forming the record of each case are entered by the probation officer on a 'leaf' and one or more 'followers'. The 'leaf' contains printed headings against which entries of the required particulars are made. The back of the 'leaf' is left blank for the insertion of any additional information. The 'followers' are intended for written reports, records of verbal reports and of visits, etc. The 'leaf' and 'followers' are kept in a stout cardboard envelope bearing on the outside the probationer's surname and initials and the date of expiry of the probation order. Half-way down the right hand side of the envelope is a thumb-hole to facilitate the insertion or removal of the contents. The envelopes are filed in alphabetical order and thus form an index of the records. Current and time-expired cases can be kept apart. Correspondence and other documents relating to the cases, but not forming part of the actual records, are filed separately."

²⁰ This contrasted with the Social services' Committee view in 1936 that probation officers were better not employed in working with ex-prisoners for fear of contamination (Home Office 1936).

²¹ It would still be many years, however, before probation supervision would come to be seen as an alternative to imprisonment: as recently as 1967, Parsloe writes of probation waiting rooms full of small boys coming in after school to see their probation officer and of children of eleven given probation for stealing sweets (Parsloe 1967:43; 57).

²² "Before the development of the probation service, the court rarely looked for more than a brief picture of the offender from the police officer in charge of the case. But courts now place increased emphasis on the offender's social and domestic background, particularly where he is young or has no previous convictions, and there has been a corresponding amount of such information they wish to have.." (1962: para 92).

²³ The Committee was novel in its constitution in that it had an independent chairman rather than the usual parliamentary under-secretary or some other permanent official (Bochel 1976: 205).

²⁴ Despite the vastly improved knowledge base of probation, however, it was still thought that probation officers should not offer courts an opinion on the likely effect of sentences other than probation, given that "probation officers were not equipped by their experience, nor could research yet equip them, to assume a general function of expressing opinions to the courts about the likely effect of sentences"

This, according to Bochel (1976) showed itself appreciative of the probation officer's "limitations in the light of existing knowledge". It is also a reflection, however, that the probation discourse was still subordinate to that of the law, as articulated by sentencers, although Bochel's comment makes clear that this discursive subordination was attributable to the *current* state of probation knowledge - and therefore open to further refinement and development, locating her own work, I suggest, within the optimistic realm of a modernist understanding of probation.

²⁵ So bad was the situation that that Sir Barnett Janner, MP for Leicester, North West noted that, in his area "many officers find themselves, despite university training undergone at considerable personal sacrifice, earning less than unskilled labourers under their supervision" (Parliamentary Debates 7th August 1962 col.755)

²⁶ Voluntary after-care was also provided by the Women's Voluntary Service, university settlements, the British Council of Churches and the Salvation and Church Armies (Home Office 1963: para56-58).

²⁷ This trend was to be seen, the report noted, in the recent amalgamation of the Prison Commission with the Home Office. Indeed, the Home Secretary "expressed the hope that the Prison Commission might become a part of a wider organisation covering all Home Office responsibility for criminal justice and the treatment of offenders" (Home Office 1963: 102).

²⁸ Established Probation Officers (including supervisory grades) 1950-June 1969:

	Men	Women	All
1950	656	350	1006
1951	685	371	1056
1952	731	382	1113
1953	765	395	1160
1954	789	411	1200
1955	801	412	1213
1956	829	418	1247
1957	861	430	1291
1958	938	453	1391
1959	1013	489	1502
1960	1135	498	1633
1961	1234	528	1762
1962	1333	565	1898
1963	1434	600	2034
1964	1566	601	2167
1965	1687	632	2319
1966	1874	683	2557
1967	2006	739	2745
1968	2168	792	2960
1969	2262	859	3121

(source: Home Office 1966: para 38; Home Office 1969: para 43)

²⁹ So much so that by 1982, the Barclay Report began with the injunction that “Too much is expected of social workers” (Barclay Committee 1982).

³⁰ The Morison Committee had suggested substantial pay rises for probation officers which were never implemented due to government pay policies and which led to feelings of betrayal both amongst probation staff and politicians as well (Parliamentary Debates 1962a, 1962b).

³¹ Interestingly, the document set out a definition of probation which drew upon an Australian model (1968: 24).

³² The Act made CS available as a sentence for anyone aged 17 or over convicted of an offence punishable with imprisonment. The sentence could be made for between forty and two hundred and forty hours (Criminal Justice Act 1972: section 15).

³³ Despite the emphasis on alternatives to custody, the discourse of penalty was not entirely oriented toward non-custodial measures, with the Power of the Criminal Courts Act 1973 giving courts the power to make extended sentences of imprisonment on persistent offenders (Powers of the Criminal Courts Act 1973 section 28).

³⁴ IMPACT, an experimental research project, was carried out in 4 probation areas: Dorset, Inner London, Sheffield and Staffordshire and studied the effect of various forms of probation ‘treatment’ in ‘high risk’ offenders. The scheme was set up to consider whether an extension of the use of probation would provide a satisfactory alternative to custody (Folkard *et al*: 1974). Experimental and control groups were set up in each area by random allocation and officers in the experimental groups were given lower caseloads to compensate for the increase in intensity of their supervision. The experimental groups received more intensive and more situational ‘treatment’. Unfortunately, the results showed that offenders with moderate or high criminal tendencies and average or fewer personal problems did worse in the experimental group than in the normal probation control group.

³⁵ Enos and Southern define Case management as

“a systematic process by which identified needs and strengths of offenders are matched with selected services and resources in corrections” (1996: 1)

³⁶ Meta analysis enables the comparison of large numbers of research studies in order to determine a measure of an overall impact – an ‘effect size’. For technical details see Rosenthal (1991).

³⁷ In order to emphasise the connotation of crime and poverty in the nineteenth century, it is instructive to note that the name the COS first took was the London Association for the Prevention of Pauperism and Crime.

³⁸ Despite the obvious moral stance taken by the proponents of scientific charity, their techniques were construed as informed by scientific discourse, an approach which had attracted the young Beatrice Webb to the Society, since it offered

"an honest though short-lived attempt to apply the scientific method of observation and experiment, reasoning and verification, to the task of delivering the poor from their miseries" (Webb 1926: 222).

³⁹ Similarly, 20 years later, CS Loch, noted that although it was hoped that the rigorous systematicity of the C.O.S programme "could renew and discipline the life of the people by a nobler, more devoted, more scientific religious charity", in time, this programme of scientific charity would "open to many a new path for the exercise of personal influence" (Loch 1903 quoted in Mowat 1961: 81).

⁴⁰ The situation had been thought deplorable some twenty years before: "The tea gardens...in the suburbs of London, are filled on Sundays with children drinking strong liquors and smoking cigars and pipes" (Report of the Proceedings of the Second Conference on the Subject of Juvenile Delinquency and Preventive Reformatory Schools 1854: 25).

⁴¹ Holmes set out his model of criminality in a letter to Tallack:

"I am persuaded that the great amount of crime comes from pathological causes. I see, day after day, and take into my care, numbers of broken wretches, weak physically, weak mentally, weak in every direction, unable to cope with the difficulties of life....with God's good grace I may exercise a good influence upon the strong minded man...But it never lightens with the weakling...as soon as I let him go, back to his misery and what we call his sin, he certainly goes. Pathological and social causes are too powerful" (Holmes, quoted in Tallack 1905).

Since these powerful forces shaped the character and criminality of the 'degenerate', Holmes (1912: 220) later reasoned that "[w]e cannot blame them for their physical inferiority" leading to the conclusion that "[w]e must admit, and frankly ought to admit the truth, and to face it, that there exists a large army of people that cannot socially be saved...[and for] these people there must be, and at no far distant date, detention, segregation and classification. We must let them quietly die out, for it is not only folly but suicidal folly to allow them to continue to perpetuate" (1912: 224).

⁴² "Probation should not be regarded as yet another means by which poor people of indifferent character can obtain charitable relief...where charity is necessary, the probation officer should rather put the probationer in touch with one of the benevolent institutions of the neighbourhood, or some person charitably disposed, than himself play the part of a relieving officer" (Home Office 1909: 42).

⁴³ Reconciliation seems to have largely involved reconciling the poor family to their circumstances and the wife to her husband's erring ways: in either case it was the wife who bore the brunt of the effort to maintain the family:

where it is necessary to deal with the husband it is always necessary to deal with the wife, and frequently it is not the erring husband who is to blame so much as the pitifully ignorant wife...our task is to put new hope into the mind and new courage into the heart, and to convince them that although it is difficult it is not impossible for peace and poverty to dwell together...the health and happiness of husband and children depend almost entirely on the woman. (Harrison 1937:149-150)

⁴⁴ The Charity Organisation Society, for example, referred to its systematic approach to assessment and classification as 'casework' – since investigating officers were allocated 'cases'.

⁴⁵ Bochel, writing in 1976, described, in a standard version of history how social casework was the result of an accretion of knowledge through historical progress. Casework thus represented the emergence of a discourse of probation based on 'science' and rigorous evidence:

"The exponents and practitioners of 'social casework' had been accumulating a 'body of knowledge' comprising principles and methods of practice considered vital to the proper execution of social work. The transfer of this knowledge, both academic and practical, was the main objective of the separate courses of specialised training for the various forms of social work then existing...[i]t afforded a theoretical framework highly appropriate to their work with individual offenders. Many saw in it the possibility of learning more in depth, of acquiring and developing new techniques and thus of being more successful in helping their probationers. Moreover, the existence of a body of knowledge, capable of being studied and expounded, provided them with an important additional bolt for the building of a 'professional image' ". (Bochel, 1976: 181).

⁴⁶ However, there was still a gendered structure to practice despite the innovations of casework. A letter from Joan King (1955) argues that lower caseloads were appropriate for women probation officers since the allocation of cases needed to take into account "the extra emotional entanglements, the numerous voluntary cases usually concerning young children or adolescent girls, which are largely brought to the woman probation officer."

⁴⁷ Such supervision took the form of the supervisor 'caseworking' the officer to guard against process which might invest the relationship with the client and affect the officer's approach, processes such as transference or the deployment of various defence mechanisms. The supervisor, then, deployed similar techniques to the supervisee in her work in order to address the needs and emotions that the officer brought to her relationship with the client:

"The central purpose of the relationship [between supervisor and probation officer] is educational. Both supervisor and colleague enter into it with the object of discovering and using a means whereby the growth of the latter can be facilitated: growth in knowledge but, more important, growth emotionally and intellectually" (Monger 1964:202)

⁴⁸ The early work of probation was seen during the 1950s in particular from a standpoint of modernist self-satisfaction, depicting the missionaries as well-meaning amateurs: "they knew the value of relationships as a means of inducing change of behaviour and attitude but they used them somewhat blindly" (NAPO 1957: 97) whilst Dawtry remarked, on the 50th anniversary of the state-run Probation service that "their efforts may now be regarded as elementary" (Dawtry 1958: 180).

⁴⁹ Once the offender's problem with authority was dealt with, then self-governance was enabled:

"the officer needs first to recognize...then show him that authority is not only power to punish but power to help...As he is freed from his resistance and experiences the feeling of being helped, he can then perhaps 'move in' or move on to seek the for the help of which he may stand in need" (Newton 1958:131-132).

⁵⁰ "In order to socialise offenders we must combine a positive social philosophy and a fundamental acceptance of social values with a fair degree of tolerance towards the lawbreaker whom he tries to change. If he condemns him out and out, he cannot treat him; if he condones his offence he cannot change him" (Schmidberg 1958:122).

⁵¹ So great was the emphasis upon probation as a professional activity, that an outraged NAPO editorial denounced the advertising of a probation officer vacancy in the Labour Exchange (Probation, vol.8. no.11. September 1958).

⁵² "Subjective, rather than objective, measures must be examined and educational measures evolved that fit each individual case. All summary investigations, measures and punishments are inadequate and instead of making the child feel secure only outrage its sense of justice." (Ziegler 1951:203).

⁵³ There were three possible causes of such a breakdown, according to Hollis.

"(1) infantile needs and drives left over from childhood which cause the individual to make inappropriate demands upon his adult world; (2) a current life situation which exerts excessive pressure upon him; and (3) faulty ego and superego functioning" (Hollis 1964:20)

⁵⁴ The 1955 Committee on Maladjustment saw the concentrated professional attention given to maladjustment after 1945 in distinctly teleological terms: "The reality behind it has existed throughout history, but it is only during recent years that the serious implications of the problem have been realised." (Ministry of Education 1955: para 15)

⁵⁵ The London Society of Juvenile Court Probation Officers suggested that magistrates should ask for psychiatric reports in certain cases:

(1) The irrationality of the child's conduct

(2) In recidivism, to establish whether or not the child is capable of being influenced by ordinary methods or whether the cause of his repeated delinquencies is deeper.

(3) The known existence of traits in addition to the delinquency itself, such as bed wetting, that may indicate maladjustment

(4) The sexual nature of an offence, when it is felt important to gain knowledge of the child's state of mind.

(5) When removal from home is under consideration." (Ministry of Education, para 352).

⁵⁶ Concluding that bed wetting was an indication of 'mal-integration', Michaels and Steinberg noted that persistent enuretic delinquents had lower IQ ratings, were more 'feminoid' and had higher rates of arson than non-enuretics. They also "tended to fall below the non-enuretic delinquents as regards 'aesthetic harmony and symmetry or the beauty of the physique as a whole' ". Thankfully, enuretic delinquents "did not differ significantly from the delinquents with no enuresis in regard to their value to the military service.." (Michaels and Steinberg 1952:122).

⁵⁷ The presenting 'symptoms' of young offenders also had a gendered nature which made the supervision of young women more difficult (Gibbens 1959). Perhaps there was more to his comment than Raeburn (1958) noted at the time - 'Probation was made for man'.

⁵⁸ And, more broadly, resonated with the "crisis of penal modernism" depicted by Garland (1995).

⁵⁹ Although one could also identify individualised explanations of crime which configure risk as an outcome of an individual's capacities and propensities. Gottfredson and Hirschi (1990), for example, do just this, arguing that crime is merely one facet of a whole series of 'risky' – that is to say, anti-social- behaviours which result from individuals failing to develop self control at a young age. One might also point to the work of Murray who has consistently argued that crime forms part of a cluster of 'inadequacies' or personal failure to conform which tie in to broader issues of personal morality and independence(eg, Lister 1996; Herrnstein and Murray 1994). Although Murray's arguments support the tenets of neo-liberalism, he also incorporates conservative discourse within his reasoning – a hybrid not uncommon in the late twentieth century (O'Malley 1999).

⁶⁰ As Foucault remarked, it is perhaps more useful to conceive of these modes of power as co-existing in a triangular relationship of government rather than considering any one mode to be dominant at a particular time (Foucault 1991).

⁶¹ Pawson and Tilley, however, demonstrate how this ‘principle’ represents what they term a “successionist law” which has been “hacked around” the literature in order to explain certain effects but which also ignores contradictory evidence (Pawson and Tilley 1997).

⁶² Although psychological explanations of offending were prevalent earlier on amongst Missionaries. Thomas Holmes, for example, remarked in an interview on both social and individual causes of offending: “But drink is not always the first cause. Drink brings the evil to light but there causes behind that which lead people to drink” such causes as low wages and inadequate lodgings. On the other hand “A large proportion of crime today is, I believe, due to mental disease, for which the perpetrators are not responsible” (Holmes 1901:327-328).

⁶³ The Report also commented that “most of the Probation Officers’ clients, for example, feel no obligation to society and see no reason why they should attempt to fit it...[i]nstead of trying to adjust them, perhaps we should attempt a far more fundamental adjustment of much of what we take for granted in the society which produces them” (Association of Social Workers 1959: 10).

⁶⁴ For example, the British Medical Association considered that “it may not be too optimistic to anticipate the day when the majority of potential sex offenders will be dealt with before they have begun to commit offences” (British Medical Association 1949).

⁶⁵ Although Foucault does argue that wherever a sentence can be isolated “one can recognise the existence of an independent statement” (1972: 81).

⁶⁶ The type of offences and the proportion of all cases made up by these offence categories are shown immediately below, contrasting the proportion for the sample and the entire population of one year’s PSRs in Kent:

	<u>Sample</u>	<u>All Reports</u>
Violence	16%	18%
Property	44%	46%
Drugs	10%	8%
‘Other’ offences	32%	29%

The proportions are not very different – certainly well within the confidence intervals of around 12% that could be expected with a sample this size. This supports my statement that the reports are *reasonably* typical of the population from which they were drawn. The approach taken, of course, that of discourse analysis, does not take into account such limits, since its focus is upon units of discourse.

⁶⁷ I refer here, of course, to PSRs written prior to the implementation of the new National Standards in April 2000. Under these new standards, risk assessment will, when the software is available, be carried out using the actuarial measures of the Oasys questionnaire.

⁶⁸ It was found by the 1910 Departmental Committee that amongst some magistrates there was a tendency to “regard the visits of a probation officer to an offender as an intrusion, causing him to be marked by the neighbours, and to become a subject of gossip, leading to keen resentment and even to the possibility of violence” (Home Office 1910b para 18).

⁶⁹ Indeed, one such programme is entitled “Reasoning and Rehabilitation” (Ross and Fabiano, 1987).

⁷⁰ I apostrophise the term “Late Modernity” since it is but one of many terms that may be brought to bear upon contemporary society and its recent future. Others, in no particular order, include “Post-Modernism” (Lyotard 1985), “Post-Fordism” (Piore and Sabel 1984), “High Modernity” (Giddens 1990), “Post-Industrial” (Bell 1976) “Advanced Liberalism” (Rose 1996) or “Disorganised Capitalism” (Lash and Urry 1994). Garland suggests that it is presumptuous to deploy the prefix ‘post’ to a consideration of contemporary circumstances since there is no evidence that many of the traits of modernity have been transformed or discarded and prefers ‘late twentieth century modernity’ – whilst acknowledging the problems that such an adjectival mouthful presents in presenting a snappy image of the present (Garland 2001:77). There is also the problem of considering the present as a point of departure or rupture: the contingencies of the present do not necessarily indicate the abandonment of old certainties, practices and beliefs en masse and there are no clear grounds for making such an assessment

⁷¹ Although the current Home Office Minister for Probation and Prisons has quite pointedly referred to these institutions as ‘corrections’ to an extent where one must suppose that this term is preferred due to its ability to contribute to the ‘modernization’ of the service (see Home Office 1999c).

Appendix 1: Initial data Collection Instrument, page 1

Name	Gender:	Age:
Offence:	Proposal:	Disposal:
Offence Analysis: gender, race, affective bonds, context background, agency/determination, contributory factors, Extent of authorial voice		

Appendix 1: Initial data Collection Instrument, page 2

Individual motivation, previous history, character, attitude, work history, family, potential for change	Proposal: type of proposal, argument for /against this or any other sentencing options; logic of reasoning
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Appendix 2:

Report #:	Nature of the Individual	Responsibility	Stability: Governmental Influences

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